
United States
Court of Appeals
for the Ninth Circuit

FREDERICK I. RICHMAN, Appellant,

vs.

DAVID TIDWELL, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver,
Appellees.

DAVID TIDWELL, Appellant,

vs.

FREDERICK I. RICHMAN, ROY E. HALLBERG, as Receiver of all the real and personal property constituting the former Richman Trust, and JOHN WHYTE, attorney for Receiver,
Appellees.

Transcript of Record

In Three Volumes

VOLUME III.

(Pages 649 to 974, inclusive.)

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s from the United States District Court for the Southern
District of California, Central Division

mony of Frederick I. Richman.)

What did Mr. Hallberg say concerning that [425] matter and what did you say concerning that subject matter of his experience in man- apartment buildings?

I asked Mr. Hallberg if he was in the busi- of operating multiple housing. He said yes, he

id, "How big are your houses?"

said he had a 40-unit.

id, "Where?"

said, "On East Colorado."

id, "Pasadena?" He said, "Yes."

id, "What is the name of the building? I at of buying some properties over there once might know it."

You are relating the conversation?

Yes. Mr. Hallberg said, "Well, I am not go- talk any more with you. I have been told not euss myself with you."

I excused the conversation and changed it to ather.

Now, directing your attention to the Western concerning the refrigeration system and the nt of February 17, 1954, did you receive a one call concerning that subject matter?

I did.

From whom? A. Mrs. Kennedy. [426]

She was the witness that previously testified

(Testimony of Frederick I. Richman.)

Q. What was said by that agent of the Rec

Mr. Whyte: Again, just for the purpose of record, I would like to object to this as calling hearsay testimony.

The Court: You dispute she was an agent

Mr. Whyte: No, I don't dispute that, Honor, but again I don't think that her connections with Mr. Richman are within the scope of employment as Mr. Hallberg's agent.

The Court: Whether they were or were not have to be determined somewhat by the nature of the conversation. You might say a lot of things that do not bear upon a particular relationship, and you might say some things of which there is a question whether they do or whether they do not.

It is difficult, without hearing what was said, to determine whether it was pursuant to the authority or was in derogation of it. So the objection is overruled, with the comment the court will have to consider it with a critical eye.

The Witness: Mrs. Kennedy stated she had a bad break in the refrigeration system. That she had tried to get hold of Mr. Hallberg, had tried to get hold of Miss Cosgrove and wasn't successful.

There was gas leaking in the building, and it should [427] be done. And I told Mrs. Kennedy she had no say in the operation of the buildings. I didn't know what to do, and in a position where I

mony of Frederick I. Richman.)

they were producing the rents that kept the going.

and that I thought she was entirely within her rights, if he had not changed the refrigeration company that had been on previously, or had given her statements as to it to change, for her to call the refrigeration company and tell them to do what was necessary to protect the tenants in the building and protect the income from the property.

(By Mr. Enright): What day was that?

That was about the 17th of February.

Did you receive another call the following

A. I did.

From whom? A. Mrs. Kennedy.

The substance of that call was what?

She was still unable to get in touch with Mr. Berg or Miss Crogrove. There appeared to be no one at the office.

and that she had asked for Mr. Harrison, but had been told Mr. Harrison was no longer working for the receiver. And the matter was still causing considerable trouble and what [428] should she do.

and again repeated I did not want to be in the position of advising her anything, and the only thing for her to do—and I thought she would be protected—as to carry through with the service company which I had formerly used for the trust, and which

(Testimony of Frederick I. Richman.)

Q. Do you know whether or not the agent the Receiver used that service company?

A. They used that service company for a period of time, and then discharged that service company.

The service company called me a couple of times wanting to know what to do. They had been unable to get in touch with Mr. Hallberg or Miss McGrove.

Q. Now, directing your attention to the Oliver Cromwell payment of January 1, 1954, did you receive telephone calls from a Mrs. O'Neal of the Specific Mortgage Company concerning that same matter of payment? A. I did.

Q. What dates?

A. On January 14, 1954, I received a call relative to the nonpayment of the January 1, '54 payment on the Oliver Cromwell. [429]

Q. That is the payment you testified that she the check cleared on January 18th, is that it?

A. That is correct.

Q. Directing your attention——

A. After receiving that call I endeavored to contact Mr. Hallberg, but could not reach him. I contacted Mr. Harrison, and he stated the check was drawn and was on Mr. Hallberg's desk, waiting for him to come in to sign the check and send it through.

Mr. Whyte: Again I want to move that the

mony of Frederick I. Richman.)

has been no showing she was an agent of the
ver.

Court: If that is in the form of a motion
like, the court will grant it.

Whyte: That is right, it is a motion.

Witness: I received on January 11th a
from Pacific Mortgage of a reminder that
mortgage payment of \$2,027.25 due on 1-1-54
not been paid.

(By Mr. Enright): Is this the notice?

That is the notice.

Enright: We will offer this in evidence, par-
in corroboration of the agent Harrison's state-
that the check was lying on Mr. Hallberg's
that portion of his testimony was not stricken.

Court: Received.

Witness: I called Mr. Harrison after re-
g that notice.

Clerk: Defendants' F in evidence.

(The document referred to was marked De-
ndants' Exhibit F and was received in evi-
ence.)

Witness: Defendants' Exhibit F. And then
ed him again after receiving the telephone
om Mrs. O'Neil on January 14th.

(By Mr. Enright): Directing your attention

Back to the payment back, was there such a

(Testimony of Frederick I. Richman.)

calls concerning the action of the agent or non-action of the agent on that subject matter?

A. I did.

Q. When?

A. The payment was due on the 15th of the month. On December 15th the payment came to my office. I transmitted it to Mr. Hallberg by envelope.

On or about January 7th I received a note from Mrs. Brookshire that the payment had not been received, and that the payment book had not been received, and she requested that it be mailed to her so that they could send in their payment on the next—the 15th of January.

I sent that note to Mr. Hallberg.

Mr. Whyte: I am going to move to strike the communications, either in the form of note or otherwise, from Mrs. Brookshire. There is no suggestion she is an agent of the Receiver. Here again is purely hearsay.

The Court: The motion is granted.

Mr. Enright: The offer of the evidence is for the purpose of showing nonaction or failure of the Receiver to perform his duties.

Q. (By Mr. Enright): Do you have the note? I believe that is base evidence. Mr. Richman, do you have the note? Or did you forward that to Mr. Hallberg?

A. Yes, I have the note. I am sorry I mis-

(imony of Frederick I. Richman.)

What did Mr. Harrison say when you talked with him, the agent of the Receiver?

Mr. Harrison stated that Mr. Hallberg had released the return of that book, but he would bring it to Mr. Hallberg's attention the next time he saw Mr. Hallberg, and would send it back to her. That was shortly after January 7, 1954?

Yes.

That pertained to the December 15, 1953 statement? [432]

The Court: On what obligation?

(By Mr. Enright): Could you answer the witness's question?

On a deed of trust that was owned by Richman Trust; trust deed receivable.

Mr. Enright: I will offer in evidence this January 7, 1954——

Mr. Whyte: To which objection is made on the ground that it is hearsay.

The Court: Let me see it. It will be received as a document received in the course of business.

The Clerk: Defendants' G in evidence.

(The document referred to was marked Defendants' Exhibit G and was received in evidence.)

(By Mr. Enright): Now, directing your attention to Arden Farms commission check, particularly Exhibit G, dated December 13, 1953, and

(Testimony of Frederick I. Richman.)

A. The Arden Farms sent through a check five per cent of the milk bill at the Canterbury between the 15th and 20th of each month.

The check was made payable to F. I. Richman individually, because they would not make it payable to the trust. [433]

Mr. Whyte: Just a moment. I am going to object to strike that as a pure conclusion of the witness and move to strike the rest of the testimony, because there is no sufficient foundation laid. I can't say where this information was coming from, or anything of the sort, so I can make a proper objection.

The Court: The motion is granted. I think that is probably a relevant source of inquiry, but we don't have enough foundation.

I know what you are driving at, Mr. Enright.

Q. (By Mr. Enright): During the period January 1, 1946 to November 30, 1953, did you as agent for the trust have a continuing transaction with Arden Farms?

A. Not from your starting date. From the time of the acquisition of the Canterbury to the end of November I had a continuing transaction with Arden Farms.

Q. When did you acquire, as agent for the trust, the Canterbury?

A. The trust acquired the Canterbury, I believe, it was October 1948.

Q. From that date to November 30, 1953,

nony of Frederick I. Richman.)

For the guests of the Canterbury that de-
to have the milk delivered to their door by
arden delivery, [434] it did.

During that period of time, up to November
53, was there a commission payable to the
on account of milk delivered by Arden to the
bury Apartments?

Whyte: I am going to object to this line
timony as being immaterial and irrelevant.
may have taken place under Mr. Richman's
, so far as his dealing with Arden Farms is
ned, doesn't seem to me to prove or disprove
sue with respect to the Receiver.

Court: But it might provide a foundation
vidence at a later time. The objection is over-

Witness: I received five per cent of the
us month's bill, a check from them between
th and 20th of each month.

(By Mr. Enright): Had you been receiving
or several months before November 30, 1953?
Ever since the acquisition of the Canterbury.
Now, did you receive a communication from
Farms of any form?

On December 18, 1953, I received a check
Arden Farms in the amount of \$5.69.

What did you do with it?

But it in an envelope and mailed it to Ray

(Testimony of Frederick I. Richman.)

A. On about January 8th I received the back, together with a notation dated 1-7-54:

“Mr. Richman:

“Will you please endorse the Arden check attached and return to me? Thank

“Roy E. Hallberg.”

It was all typewritten; not even signed by Hallberg.

Q. Now, directing your attention to the utility company that furnished you gas service, will you state whether, or, which utility of our Angeles Utilities furnished gas to these five apartment houses?

A. Southern California Gas Company furnished gas to all five buildings.

Q. On or about January 8, 1954, did you receive a communication from the Southern California Gas Company concerning payment of the gas utility bills?

A. I received an audited request at that time from the Gas Company, showing it did not cash a reply or payment, but stated—showing that account, the bill for the period ended December 14th of \$81.78 was still outstanding.

Q. That is as of January 8, 1954?

A. That is correct. I contacted Mr. Hallberg and verified it, and did not send it through, because

mony of Frederick I. Richman.)

from the Gas Company for the Canterbury for
period December 14th to January 14th in the
t of \$89.39, and showing that the bill for the
from November 12th to December 14th, in
amount of \$81.78 was still unpaid, making a
amount due of \$171.17 as of January 21, 1954.
Now, directing your attention to the power
ater utilities, did you receive communications
those concerning the Receiver's incurring or
curring those bills? A. I did.

Recite the dates.

January 15, 1954, the water, light and power
r the Oliver Cromwell, for the period of De-
r 7th to January 7th, was received by me.
ansmitted it to Mr. Hallberg, and attached to
a sticker, "Your previous bill may have been
oked. Please give this statement your prompt
on."

, I had received a gas bill for the Fountain
e for the period December 7th to January 7th
amount of \$207.45, showing the bill for the
November 4th to December 7th, in the
t of \$199.66 was still unpaid; for a total of
1.

That is as of January 15, 1954? [437]

Yes.

Those are utilities as of November, which
yet unpaid? A. Yes

(Testimony of Frederick I. Richman.)

bills for the LaLoma, for the period as of January 11, 1954, and both bills—that is, the house bill the manager's phone showed that the December 1953, phone bill of both the manager and the was unpaid.

The manager's phone was \$4.40 for the current month, and the previous unpaid month was

The house phone was \$8.31 for the current month and \$6.33 for the previous month, which had been paid.

The utility bills and phone bills were all in my name, and I received numerous calls from relatives relative to non—from the utility companies relative to the nonpayment of the bills.

The Receiver evidently made no attempt to transfer the service into his name as Receiver.

Q. Directing your attention to Barker Bros. did you receive a notice from them sometime in January 1954? A. I did, January 18, 1954.

Q. What was that bill for and for what period of time? [438]

A. The bill was for—the notice was for \$60 relative to purchases made in November, and that was one of the bills I had delivered to Mr. Hallock as being unpaid when he took over the operation of the trust, about December 1, 1953.

Q. Did your previous testimony cover the Berkeley gas bills? I guess it did, didn't it?

A. Yes, but on January 26, 1954, I received

imony of Frederick I. Richman.)

the bill, in the amount of \$278.44 being unpaid.

I will direct your attention to compensation
insurance policy. Did you receive a request upon
them? A. I did.

What date?

I received the blank statement to put on the
all figures about December 28, 1953. I sent that
to Mr. Hallberg, with the request that he put on
figures for the trust for the period of October
November 1953.

and then I would send it to the company, and
I would be able to compute the amount of the
insurance deposit premium which goes to the trust
I would repay the trust with.

The Receiver had then taken possession of
the books and records for the months of October
November, is [439] that right?

That is correct. I didn't have any informa-
tion relative to the amount of payroll for Novem-
ber or October, which I needed for that audit.

Did you receive a reply from the Receiver?

I did not. On January 22nd I received a
request from the insurance company. I
submitted that and talked with Mr. Harrison.

He stated that he would try to get it out as
early as he could, but he would have to discuss
it with Mr. Hallberg and he didn't see Mr. Hallberg

(Testimony of Frederick I. Richman.)

of \$400.00 on account of compensation insurance do you have that subject matter in mind?

A. Yes.

Q. There is such an item shown?

A. Yes, the compensation insurance companies require a premium deposit. In this instance \$400.00, to write the policy, so the receiver's books reflect—and I was present when he ordered the policy from Mr. Dulley, and was told it would be a \$400.00 deposit premium on the compensation policy, which he had to take out in his name as Receiver.

Q. Does the Receiver's accounting in any manner account for the refund, if any, or disposition of that \$400.00 item, other [440] than being a charge?

Mr. Whyte: I object to that. The Receiver's account is the best evidence and will speak for itself.

The Witness: There is nothing in the Receiver's account showing any audit on that compensation or any return premium on that.

The Court: They seem to be going along with your objection, Mr. Whyte; Receiver's account.

Q. (By Mr. Enright): Have you examined the account? A. I have.

Q. Is there any place in here where there has been a refund or an accounting in any manner of the \$400.00? A. There has not.

Q. Are you familiar with the payroll incurred by the Receiver while he was in possession of

imony of Frederick I. Richman.)

payroll during comparable periods of time, back so far as January 1, 1946, for example?

Whyte: Miss Reporter, will you read the question? I didn't catch it.

(The question was read.)

Whyte: What payroll is that?

Enright: The payroll for which Mr. Hall deposited \$400.00. [441]

Whyte: I understood that \$400.00 to be an advance deposit. I don't quite catch the connection.

Enright: Compensation insurance.

The Court: I think they are proving the payment of premium for workmen's compensation coverage for employees of the trust.

Is that right?

Enright: That is correct, your Honor.

The Court: What is the point you are making, Mr. Whyte can get it?

Enright: I am endeavoring to introduce the evidence which will demonstrate there has been no payment or settlement of the account by the Receiver, first.

And, second, we will produce evidence there is approximately \$150.00 refundable on account of the \$400.00 deposit; another action or nonaction on the part of the Receiver.

(Testimony of Frederick I. Richman.)

the same time, we are interested in any change made along the line of refund.

I think we should be fair to the Receiver. I called him in here one morning and said, "Plaintiff and defendant have reached an agreement. Plaintiff give over possession this [442] week end. And the order specifically states you turn over everything to Mrs. Tidwell and her agents, other than cash in bank and under your control."

Now, at that time, I will stipulate for the purposes of this argument, that the Receiver had used up the whole \$400.00 he had been paid—the Receiver had not used up the whole \$400.00 he had paid in this five-month period.

Now, we have made an agreement. We bought out the assets of the trust as of March 1st.

Now, if they have any complaints on that, it is against us. That is something that can be dealt with us.

We can't just kick a Receiver out over a week end and then say, "You failed to make an accounting of any moneys that hadn't been used up."

The point is he paid the money out and he set it in his accounting. I think the matter speaks for itself.

If they think, Defendant Richman thinks Plaintiff is entitled to any of this money, that is something for the plaintiff and defendant to fight out in

mony of Frederick I. Richman.)

not jeopardize anyone's rights, and will save time.

Court: Well, I rather gather from the line of testimony that Mr. Enright is endeavoring to establish the practice by the Receiver. Is that right?

Enright: That is one point. [443]

Court: To that end the door has to be left open to receive testimony which might be relevant in that field, whether it does or does not prove the alleged accusations, so the objection will be overruled.

(By Mr. Enright): My desire, Mr. Richman, is to ascertain now whether or not you have made a statement, based upon your experience, as you previously testified, as to the amount of money received by the Receiver under this \$400.00. A. I have.

What is the amount?

The compensation policies run differently from others.

Whyte: I am going to object to this. There is no sufficient foundation laid for his knowing all the facts which will indicate——

Court: Objection sustained. No proper foundation.

Whyte: ——what the amount will be.

(By Mr. Enright): Did you examine the books and records of the Receiver? A. Yes.

Did you examine his accounts?

(Testimony of Frederick I. Richman.)

A. I have; it is in his report. [444]

Q. Did you examine to ascertain the charges for workmen's compensation insurance?

A. I have.

Q. State the amount that accrued.

A. The amount accrued——

Mr. Camusi: I object to that on the ground that it is still not the best evidence. I don't want this evidence coming in. I want to see the relevant records.

The Court: Objection sustained.

Mr. Enright: You want to see the records.

Q. (By Mr. Enright): Will you get the records, Mr. Richman?

The Witness: Do you want to take a recess? I am going to take me some time to dig them out.

The Court: All right. We will recess until the witness finds the records.

(Short recess taken.)

Mr. Whyte: Your Honor, I wonder if I may have permission to ask Mr. Richman a few questions on voir dire, with respect to this and so-called insurance refund.

I think I can show it has no materiality here. I can be permitted to ask the witness a question or two.

The Court: All right. Go ahead. [445]

mony of Frederick I. Richman.)

refund from an insurance company on account of compensation insurance, is that correct, sir?

Not a refund of \$400.00.

How much was the refund?

I figure the refund should be in the neighborhood of \$158.00.

Is that the item which you said was not in the Receiver's report?

That is correct.

When did that refund—when was that item added to the Receiver, if you know?

I don't know whether it has been refunded. It could be refunded until the Receiver filed his final figures for the three months of his operation. The company computed the amount of prepayment upon his payroll figures, and then he would get a refund.

You say you don't know whether it has been refunded or not?

No. It does not show in his report at all.

If it had not been refunded, naturally, it would not show in the Receiver's report, would it?

That is correct, but it is an amount that should belong to the Receiver. It was money deposited there, that hasn't been used up and is refundable to the Receiver.

The \$400.00 deposit does show on his books, as

(Testimony of Frederick I. Richman.)

roughly December 1, '53, to February 28, 1954, you not? A. That is correct.

Q. Then any transactions occurring outside that period would not be shown in the Receiver's report, would they?

A. No, the Receiver's report also shows checks dated March 8, 1954, after the period of the report.

Q. You refer to the many checks which are shown in the Receiver's report. Will you direct attention to those, please, Mr. Richman?

A. Yes. They are on Exhibit C, "Disbursements Made by the Receiver, as Directed by the Court, Covering Liabilities Incurred Prior to February 28, 1954, but not Paid Until After that Date," which is three pages of them.

And then the recapitulation at the bottom of page 3 shows the amounts according to the 12 months operation of \$26,819.19.

The payments as listed above of \$6,121.40, that means [447] the payments which were made after February 28, 1954.

Then it shows the balance as of March 10, 1954, of \$20,697.71.

Q. Schedule C you have referred to is limited to disbursements made on account of liabilities incurred during the month of February 1954, is it not, Mr. Richman?

mony of Frederick I. Richman.)

Yes. The insurance premium was due and payable for the period of time of the three months' term, subject to an audit.

Do I understand you correctly as telling me that when the receivership or successors to the Receiver have a refund coming from the insurance company, that that is a liability which they have incurred?

No, not a liability they incurred, but their obligation for compensation insurance for the three months' period of time is a liability they have incurred in the receivership.

Whyte: I think I have developed sufficiently to show your Honor that the omission of any reference from Mr. Hallberg's report is completely explainable upon the ground it wasn't received during the period which the report covers and, in fact, the witness doesn't even know it yet has been received.

The Court: Treating that as an objection, the objection is sustained. Now, it would be proper to ask that, if it be the fact, that the Receiver was entitled to a refund, that the Receiver did not apply for the refund.

That under the contract or the rights as fixed by the time within which the refund could be obtained has expired.

(Testimony of Frederick I. Richman.)

Mr. Camusi: I would like the record to state objection perhaps a little different way.

The Court: To what are you going to object question?

Mr. Camusi: The whole line.

The Court: The court's ruling or what?

Mr. Camusi: The whole line of questioning, Honor. I don't think they can make out a case on the bare facts in this case, because this court ordered by your Honor that Friday morning, you directed the turning over of the assets to the plaintiff Mrs. Tidwell on Sunday afternoon, said assets.

This potential refund at that time was an asset. It was turned over to Mrs. Tidwell.

If they think they have some interest in that, is [449] something we will fight out on our own. It is our position they haven't.

The Court: Let's mark that down as one issue to be considered in the pretrial that is coming.

Mr. Camusi: That is right. You can't come in and attack the Receiver for not having collected this. We wouldn't have permitted it, because, under the order of court and our stipulation with the defendant Frederick Richman, it was conceded on all points that all assets, except money in the bank or under the control of Receiver at that time, were turned over to the plaintiff and they were to

imony of Frederick I. Richman.)

it could come back would be to Mr. Hallberg.
policy is in Mr. Hallberg's name.

e Court: His statement doesn't call for a
ment from you. There was no question for you
like a statement to.

. Enright: The amount of \$125.00—

. Camusi: I will stipulate, to save time—we
n the process of checking that—if Defendant
man thinks he has any right to it, that refund,
ll have ample opportunity to make that claim
s fight with us.

e Court: That is where I think we should
der it, instead of considering it with this Re-
c, who was subject to an order. [450]

e Witness: That check will come back in the
of the Receiver and will be endorsed by him
to you and your client, or he will send an
rization to the company to give it to you, ac-
ng to the insurance rules. Otherwise, it will
directly back to the policyholder, who is Mr.
berg.

(By Mr. Enright): Mr. Richman, have you
ined the books and records and correspondence
e Receiver?

To a certain extent, yes.

Did you find anything in there anywhere
ining to the Receiver making an application

(Testimony of Frederick I. Richman.)

There is no foundation laid here to show under what circumstances the Receiver would have made an application. I don't see the materiality.

The Court: He can only ask one thing at a time. Objection overruled.

I do think, Mr. Enright, this could be put between Mrs. Tidwell and Mr. Richman, rather than on this fixing of a Receiver's compensation. [

Mr. Enright: I bring it out at this time, Honor, primarily in response to the conclusion that the Receiver he was so experienced in this field had conducted this business so efficiently. He is a fine example, in my opinion, at least, as to the nature of his activities.

Q. (By Mr. Enright): You did go over all the books and records and found no application of any kind pertaining to refund for workmen's compensation insurance? A. That is correct.

Q. That will be a matter of auditing, I suppose. Now, directing your attention to public liability insurance, and particularly Mr. Hallberg's testimony that the public liability insurance insured the property, as distinguished from property of the trust.

Did you examine the records pertaining to that insurance? A. I did.

Q. Was there any of your property covered by that insurance? A. There was not.

mony of Frederick I. Richman.)

Just I had sent out for the payment of the sum on there, and then at a subsequent time he gave me a check, No. 207, dated [452] January 10, 1953, to Robert H. Dulley Company, for \$3,827.66, marked in the voucher part "12-1-53. CL for \$3,427.66." That is the amount of the liability policy.

Also "12-2-53, C—" which stands for commission—" \$480.00, 12912."

That was the \$400.00 deposit on the commission policy, which he took out for himself.

The check bears the stamp of Union Bank perfect, as having been paid on 1-18-54.

The public liability policy was not rewritten in 1954. It was the identical policy that Mr. Dulley submitted to me and which I turned over to the Receiver on, I believe, December 4, 1953.

Now, directing your attention to the subject of fiduciary income tax return, and particularly to Mr. Hallberg's testimony he had two conferences at the Revenue Department, on how to prepare that return or in connection with the return, you receive a statement from the Receiver as to the amount of moneys that had to be received by the beneficiary and had been received by the trustee as a beneficiary?

(Testimony of Frederick I. Richman.)

Q. Did you locate the copy of the fiduciar turn [453] prepared by the Receiver?

A. Yes, I have in the record, since no copy ever sent to me for my information.

Q. May we have it at this time and ha marked for identification? A. Yes.

Mr. Enright: May this be marked next in for identification?

I would like to offer it in evidence, if the not going to be objection.

Mr. Whyte: No.

The Court: Received.

The Clerk: Defendants' H in evidence.

(The document referred to was marked defendants' Exhibit H and was received in dence.)

DEFENDANTS' EXHIBIT H

U. S. FIDUCIARY INCOME TAX RETURN

(FOR ESTATES AND TRUSTS)
For Calendar Year 1953

1953

1041
Department
of Serviceor taxable year beginning Jan. 1, 1953, and ending January 1, 1954

(PRINT NAMES AND ADDRESS PLAINLY BELOW)

Name of

Estate or Trust

CHECK (✓) WHETHER ESTATE ☐ OR TRUST ☒Name and
Address of
FiduciaryWilliam F. Johnson117 South Hill StreetLos Angeles 12, California

Do not write in these spaces

Serial
No.

(Cashier's Stamp)

INCOME

on bank deposits, notes, corporation bonds, etc. (except interest reported in item 3).....

on tax-free covenant bonds upon which a Federal income tax paid at source.....

on Government obligations, etc., unless wholly exempt from tax from partnerships, and other fiduciaries (from Schedule A).....

and royalties (from Schedule B).....

gain (or loss) from sale or exchange of capital assets (from Schedule C).....

gain (or loss) from sale or exchange of property other than capital assets (from Schedule D).....

or loss) from trade or business. (Attach statement).....

income. (State nature of income).....

total income in items 1 to 9.....

\$

125.00

90,796.13

3.76

\$ 90,821.13

DEDUCTIONS

(Explain in Schedule F).....

(Explain in Schedule F).....

deductions authorized by law. (Explain in Schedule F).....

total deductions in items 11 to 13.....

\$

36,856.89

36,856.89

(item 10 less item 14).....

\$ 53,964.24

amount distributable to beneficiaries (total of columns 3 and 4, Schedule G).....

53,964.24

amount taxable to fiduciary (item 15 less item 16).....

\$ 53,964.24

COMPUTATION OF TAX FOR CALENDAR YEAR 1953

(For Other Taxable Years Attach Form 1041FY)

amount (item 17, above).....

\$ 53,964.24

exemption (\$600 for an estate; \$100 for a trust).....

100.00

(item 18 less item 19).....

\$ 53,864.24

amount in item 20. See Tax Rate Schedule in Instruction 21. (If item 18 includes fully tax-exempt interest, see Instruction 21).....

\$ 53,864.24

if separate tax computation is made, enter tax from line 23, Schedule C.....

\$ 53,864.24

fiduciary's share of income tax paid to a foreign country or U. S.

\$ 53,864.24

Defendants' Exhibit II—(Continued)

TRUSTEES' ESTATE TRUST PROPERTIES

RECONCILEMENT OF INCOME

December 31, 1953

Income from Properties (See Attached Schedule)	\$90,796.13
Interest earned	126.44
Unearned Income (See footnote)	<u>3.86</u>
Gross Income	\$90,926.43

Administrative Expense	\$ 459.99
Insurance -	
Compensation	\$ 713.13
Public Liability	<u>787.76</u> 1,500.89
Management Fee	\$ 34,429.63
Salaries	475.00
Payroll Taxes	<u>21.38</u> 34,926.01

Total Expenses	<u>36,884.89</u>
----------------	------------------

Net Income	<u>\$54,032.54</u>
------------	--------------------

Excess payroll
allocations in 1953.

1953:

W. Tidwell	\$ 19,887.51	
Richard I. Richman	<u>19,887.50</u>	\$39,775.01
Unallocated Income		<u>14,264.53</u>
		<u>\$54,032.54</u>

Income	\$ 103,271.44	\$ 90,274.22	\$ 22,165.02	\$ 91,961.66	\$ 53,380.01	\$ 274,752.38
Depreciation	27,882.97	17,576.14	10,111.57	25,731.72	10,440.21	91,742.61
Interest & Taxes	5,821.19	7,566.32	2,654.30	6,312.63	5,347.84	32,742.28
Insurance	669.34	645.27	196.22	1,378.89	177.60	3,070.32
Interest				9,002.53		9,002.53
Repairs	6,155.51	6,719.44	2,937.72	5,904.37	4,653.66	26,670.70
Utilities	7,956.12	8,597.75	2,719.73	6,001.32	3,741.82	31,018.77
Wages	3,695.57	3,547.37	1,017.11	3,040.15	1,033.27	13,333.47
Salaries	20,224.63	19,644.87	3,705.36	19,168.13	6,223.21	70,965.20
Roll Taxes	592.75	584.02	166.74	562.55	373.13	3,176.22
Cellaneous	2,203.52	462.72	53.50	1,153.12	244.96	4,194.88
Expenses	79,015.69	65,644.92	23,597.25	62,557.41	35,104.70	285,919.92
Operating Profit	24,255.75	24,629.29	8,767.80	9,404.25	23,775.31	90,532.40
Less:						
Taxes--Mern Co. Acres				2.53		
" --Madera County				18.14		
" --San Bernardino Acres				15.30		
Net Income from Properties						90,796.13

Defendants' Exhibit H--(Continued)

Acquired	Improvement	Depreciation	Cost	Life	Yrs.	12 5/12 Yrs.	Depreciation
10-1-48	\$ 347,733.05	\$ 88,671.15	\$ 259,061.90	16 2/3	Yrs.	12 5/12	\$ 16,647.72
10-1-48	35,000.00	17,850.00	17,150.00	8 1/3	"	4 1/12	4,200.00
Var.1950-1-2-3	32,011.92	8,190.76	23,821.16	4 1/6	"	Various	7,035.25
<u>Hotel</u>							
1-15-44	178,359.98	77,890.42	100,469.56	20	"	11	6,809.24
1-15-44)							
9-25-48)	38,589.55	36,830.90	1,758.65	8 1/3	"	4 1/12	430.80
Var.1950-1-2-3	48,295.68	14,025.41	34,270.27	4 1/6	"	Various	10,081.64
1-15-44	6,666.67	2,985.01	3,681.66	20	"	11	254.46
5-20-49	140,000.00	30,100.00	109,900.00	16 2/3	"	13 1/12	6,842.52
5-20-49	10,000.00	4,300.00	5,700.00	8 1/3	"	4 3/4	1,200.00
Var.1950-1-2-3	8,155.34	2,668.88	5,486.46	4 1/6	"	Various	2,069.05
<u>.Hotel</u>							
9-1-50	315,051.18	44,107.00	270,944.18	16 2/3	"	14 1/3	15,988.80
9-1-50	35,000.00	9,800.00	25,200.00	8 1/3	"	6	4,200.00
Var.1950-1-2-3	25,956.09	6,687.23	19,268.86	4 1/6	"	Various	5,542.92
<u>Hotel</u>							
5-7-41	121,014.48	56,489.70	64,524.78	25	"	13 1/3	3,973.56
Var.1950-1-2-3	28,863.11	8,470.05	20,393.06	4 1/6	"	Various	6,466.65
	\$ 1,370,697.05	\$ 409,066.51	\$ 961,630.54				\$ 91,742.61

Defendants' Exhibit H--(Continued)

Page 4

BENEFICIARIES' SHARES OF INCOME AND CREDITS. (Include as beneficiaries persons to whom amounts were paid or set aside for religious, charitable, etc., purposes.) (See instructions 4 and 16)

1. Name and address of each beneficiary or charitable organization, or individual donee, if any	2. If return is for a trust, state relationship of grantor to each individual beneficiary	3. Taxable income less any partially tax-exempt interest included in item 4, page 1	4. Partially tax-exempt interest included in item 4, page 1	5. Federal income tax paid at source (2% of item 3, page 1, less item 24, page 1)	6. Income and profits taxes paid to a foreign country or United States possession
Mrs. Sidwell her name is Norman, M. Sic man C. 111 April 13, 1947.		\$ 27,019.77			
Totals.....	xxxxxxxxxx	\$ 41,039.54			

QUESTIONS

income tax return filed for the preceding year?

If so, to which District Director's office was it

at inst. - 0-14 for 14

ate or trust was created on 2, 1915

if will or trust instrument and statement required

General Instruction I have been previously

ed, state when and where filed overno

whether this return was prepared on the cash ☐

Whether this return was prepared on the cash ☐
 accrual ☐ basis.

state or trust at any time during the taxable year

state or trust at any time during the taxable year
 directly or indirectly any stock of a foreign corporation.

rectly or indirectly any stock of a foreign corpora-

tion or of a personal holding company as defined in section 501 of the Internal Revenue Code? (Answer "Yes" or "No") 0 If answer is "Yes," attach list showing name and address of each such corporation and amount of stockholdings.

6. If return is for a trust, state name and address of grantor

.....

.....

.....

7. If return is for an estate, has a United States Estate Tax

Return been filed? (Answer "Yes" or "No") _____
If answer is "No" will such a return be filed? "Yes" ☐

"No" ☐ "Uncertain" ☐ (Check which.)

DECLARATION (See Instruction F)

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been prepared by me, and to the best of my knowledge and belief, is a true, correct, and complete return.

.....
 person (other than taxpayer or agent)
 preparing return)

(Date)

(Signature of fiduciary or officer representing fiduciary)

(Date)

(Name of firm or employer, if any)

(Address of fiduciary or officer)

mony of Frederick I. Richman.)

Court: At this point, counsel, we will recess
case for a few minutes while I take up another
r on our calendar, but which shouldn't require
much time. I had planned to take the after-
recess at this time, although we took it earlier.
(Whereupon, other court matters were
heard.)

(By Mr. Enright): Directing your attention
hibit H, the income tax return, does it reflect
elf as one of the beneficiaries, as receiving the
e for November and December 1953? [454]

It does.

Did you receive the income?

I did not.

Was any portion of that money, that is, No-
er's collections, taken off by the Receiver on
nber 1st?

e Union Bank, the December collections are
a part of this fund accounted for in the Re-
's accounting, is that right?

That is correct. The fiduciary return

Whyte: Objected to. There is no question
ng.

Court: Do you desire to further explain
answer, Mr. Richman?

e Witness: I do.

(By Mr. Enright): Proceed

(Testimony of Frederick I. Richman.)

in fact, I only received from the Richman trust for the year 1953 the sum of \$19,887.50.

The figure which I used on my individual income tax return was \$19,887.50, because I am a cash basis taxpayer.

But the figure the Internal Revenue, Department of Internal Revenue will be checking on will be the figure of \$27,019.72. I can expect an audit as a result of this return.

Mr. Whyte: Now, I am going to object to the line of [455] testimony and ask that this be stricken upon the ground there is no showing of materiality. There is no showing these papers are, that the Receiver has prepared the return in any manner that was improper or otherwise in violation of the instructions and conversations with the employees of the Director of Internal Revenue.

The Court: The answer is in. The objection comes too late, so the answer will stand. I deem the line of inquiry irrelevant, so it should not be pursued further.

Mr. Enright: The relevancy, in my opinion, to your Honor, was the fact that the Receiver testified on direct that he had rendered services in preparing an income tax return.

The Court: Another question.

Q. (By Mr. Enright): Now, directing your attention to the subject of surcharges, does the

mony of Frederick I. Richman.)

Whyte: Won't the report speak for itself
your Honor?

Court: Yes, it will. I take it this is only to
be a line of inquiry and to pinpoint it.

Witness: The Receiver's report shows that
he took over he was chargeable with \$785.00,
of February 28, 1954, there is no accounting
e \$785.00.

(By Mr. Enright): Did you make a compu-
of the [456] rents collected by the managers
e month of February, as to the total amount
ts collected? A. I did.

How did that amount compare with, or what
he difference, if any, between that amount,
by the Receiver for the month of February?

The managers show they collected—

Do you know the net difference, Mr. Rich-

A. \$1,290.59.

That is, the collections for February 26th,
28th? A. That is correct.

Court: How much?

Witness: \$1,290.59.

(By Mr. Enright): For what period?

Well, it is the amount that is necessary to
ce the amount shown, that the managers of
dividual buildings collected for the month of
ary, with the amount shown in the Receiver's

(Testimony of Frederick I. Richman.)

his report. A difference of \$752.28, which was available for his collection on February 28, 1954.

The Western Arms, the manager's report \$4,724.25 [457] available to the Receiver for month of February 1954, but the Receiver took from her \$4,185.94, leaving a balance \$538.31, which the Receiver could have collected February 28, 1954. Or a total——

Mr. Whyte: As to both statements made by Richman, that the Receiver could have collected such and such a date, I am going to move the stricken; pure conclusion on his part and no foundation laid whatever.

The Witness: Mr. Camusi and Mr. Udall collected them on February 28, 1954.

Mr. Whyte: I will accept that statement, Richman.

Mr. Camusi: I won't. I don't know it is truth. It is not the best evidence and I object that ground and ask it be stricken.

The Court: Sustained; granted.

Mr. Enright: Well, I am merely accumulating the evidence here at this time. It is in the deposition of Mr. Hallberg and it is in evidence already.

The Court: Apparently, this is part of the accounting between Mrs. Tidwell and Mr. Richman and the figures, I take it, will not be in dispute. They are the result of an audit on which auditors

imony of Frederick I. Richman.)

Enright: I would merely point out the court [458] was that the Receiver retain moneys in his control, the order of February 26, 1954; as an item of \$1,290.59 that he did not retain. I am concluding the evidence on the point. Whether it is relevant or not, I can only state what court order was.

(By Mr. Enright): The net difference was \$1,290.59? A. That is correct.

Oliver Cromwell was \$2,027.25?

That is correct.

You seek those surcharges against the Receiver in this proceeding? A. I do.

Or that they be a charge against the plaintiff in this action?

They should be taken into account in this proceeding.

Court: We are going to try the case as between the plaintiff and defendant at a later time, as to what shall be done with these moneys.

I will keep under submission this matter of the accounting of the Receiver's account and fixing his compensation until that other matter is decided.

Enright: Thank you, your Honor. That is favorable to our side. We merely want the moneys taken into consideration.

Whyte: I would like to inquire of the court

(Testimony of Frederick I. Richman.)

surcharge to the Receiver personally for any these claimed items.

Now, is that correct, Mr. Enright?

The Court: I understand Mr. Enright is seen to charge the fund which is in the Receiver's session.

Mr. Whyte: Very well.

The Court: Is that right, Mr. Enright?

Mr. Enright: Yes.

Q. (By Mr. Enright): And in the same category as the \$2,027.25, Oliver Cromwell payment?

A. Yes.

Q. Now, directing your attention to the subject matter of your November fees under the trust agreement, terminated by the decision of November 30, 1953, did you have a conversation with the Receiver concerning the amount of your fees, the payment of your fees? A. I did.

Q. Does the Receiver account for your fees being an obligation of the trust in the amount of \$3,104.33? A. The report so shows.

Q. State the conversation you had with the Receiver.

A. The first conversation was when Mr. Whyte was [460] present, December 3rd, in my office I mentioned the fact I would be entitled to fees.

Mr. Camusi: I object on the ground of hearsay. Plaintiff's Exhibit 10 is a letter from the Receiver to the Plaintiff dated December 3rd, 1953, in which the Receiver states that he has paid the Plaintiff the sum of \$3,104.33 for the November 1953 fees.

mony of Frederick I. Richman.)

e Court: I take it that no one claims the
ever paid his fees?

Camusi: We can stipulate——

e Court: Since it is not money paid out by
receiver, and if it is allowed should be allowed
st the fund, and that litigation is to be taken
re on the 18th, we ought to defer inquiry until
time.

e Witness: Other than the statement that the
ever made, it had never been mentioned to him.

e Court: What difference does it make? What
ence does it make if you had a big fight about
if you negotiated about it. I don't see it makes
ifference. You either have it coming from the
or you don't.

d since all counsel are here, I might mention
tative thought I have upon that, so that you
deal with it in your research and be prepared
scuss it at the time of the trial.

seems to me that the judgment in the principal
wiped out the contract, that is, it was a void-
contract [461] and it was voided by that judg-

erefore, Mr. Richman is not entitled to the
as contracted, but it is obvious from the evi-
e which we have had before that he rendered
ces, that he was the trustee during this period

(Testimony of Frederick I. Richman.)

heads are shaking no one agrees with what I have said—you can argue it fully on the 18th; or you would be more convincing, show me authority one way or the other.

Q. (By Mr. Enright): State the conversation you had with Mr. Enright and Mr. Hallberg on that subject matter.

Mr. Enright: Rebuttal testimony. These gentlemen have claimed they rendered services here, I would like to have the evidence completed on the rendition of their services. That is the object of this testimony.

Mr. Whyte: Objected to as immaterial.

The Court: What services are they going to be paid for on arguing about something which is not part of their business? I am not going to allow any more for discussions about this subject.

Mr. Enright: To Mr. Whyte or Mr. Hallberg.

The Court: No.

Mr. Enright: I will not pursue it further today.

Q. (By Mr. Enright): Now, directing your attention to the testimony of Mr. Mann, the hypothetical question, stating 406 apartments. How many apartments were there, in fact? A. 409.

Q. And the same question pertaining to Mr. Hallberg's testimony as to how many apartments he was managing. A. 409.

Q. He testified 406. Have you examined the owner's records pertaining to his claim of his

mony of Frederick I. Richman.)

, as a part of his services, a system of filing
ls? A. I do.

What did you find in his records pertaining
filing of the bill, for example, covering three
r apartment houses for services or materials
hed?

I couldn't find them. Billings for the indi-
houses were in individual piles. The others
just in hodge-podge in another file.

Do you recollect his testimony that he set up
em to determine each house's expenses each
? A. I do.

Do you have his bookkeeping record here or
ents he set up?

I have the Receiver's books here. [463]

Point out the accounting, if you can, show-
e expenses per house for each month.

The Receiver has endeavored to set up col-
in the book for the individual houses, as far
individual expenses are concerned, against that
ular house.

ever, he has not followed through with it
e records as shown would not give the indi-
expenses of the individual houses in com-
detail.

Will you refer to each sheet, so there will

(Testimony of Frederick I. Richman.)

show, but as to his conclusion that they do or do certain things, I don't think it is permissible.

The Court: Is this book in evidence?

Q. (By Mr. Enright): What do you have before you?

A. I have what purports to be the general ledger of the Receiver.

The Court: It ought to be in evidence. It is, and since it will be in evidence before we get through here, I will examine it and determine how much of Mr. Richman's testimony is conclusion and how much is simply orientation of the court to the document. So the motion to strike is denied. [SOUND]

Q. (By Mr. Enright): Proceed, Mr. Richman.

A. The Receiver lists a petty cash fund and provides the amount of \$785.00 between the five houses as of February 28, 1954, and the prepaid insurance is not segregated to the individual houses, which would be an item to give the expense of the individual houses.

There are numerous pages in the books which merely set forth a title, with no entries on the page at all. There is one "Inventory." There is another page, "Investments."

"Real Estate Control" is not broken down to give what the individual building is carried at.

Mr. Whyte: I am going——

The Witness: Neither is the reserve for depreciation.

mony of Frederick I. Richman.)

ony, in answering, whereby the witness attempts to pick holes and flaws in the method of making these books, upon several grounds.

In the first place, this man hasn't been qualified as an expert, a CPA, who is able to tell us whether these books are set up in a proper manner.

No foundation has been laid as to his qualification to state whether or not Mr. Hallberg's method of bookkeeping is improper or wrong in any degree. [465]

Enright: May I be heard?

Court: We have had before us, in the principal trial of the case, considerable evidence of Mr. Richman's keeping books on the particular property over a long period of time.

I think, although he is not qualified to testify as a public accountant would be, that he is qualified to testify from his own experience in the handling of these properties, that a particular subject either was or was not treated in the books.

Whyte: Well then, my second objection, presenting the court has overruled the first one, is what the witness testifying to here, again, is just his conclusion as to what he draws from entries or omissions of entries in these books. It seems to me that is the court's property and not Mr. Richman's.

Court: It is the court's, but the court wants to be fully advised on a matter of judging the testimony.

(Testimony of Frederick I. Richman.)

is broken out, as far as the value of the five individual buildings are concerned.

The research for the depreciation of furniture and fixtures is broken out to give the value against each of the five individual buildings—the furniture in each of the five individual buildings. [466]

The improvements is broken out into the five buildings. The question of the account of supplies is not broken out to the five buildings, but there is a notation to F.M. and W.A., which would mean evidently, those supplies went to the Four Manors and the Western Arms.

The unemployment insurance premium sheet has columns headed up for the five buildings, but there is not a figure on that page.

The prepaid taxes have columns headed up for the five buildings, but there is not a figure on that page.

There is a sheet entitled "Utility Deposits," without a figure on the page.

There is a sheet entitled "Deposits, W.C.," which means workmen's compensation insurance, but the credits do not add up to the credit balance shown in the balance column. So it would be impossible to attempt to balance these books, without considerable work on them.

There is a sheet "Advance on Conditional Contracts," without any writing on that page.

There is a sheet of "Note and Accounts Receivable"

mony of Frederick I. Richman.)

There is a sheet "Accounts Payable," with columns for the five buildings, headed up, but not a column on that sheet.

There is a sheet "Notes, Short Term," and not a [467] on that page.

There is a sheet "Accrued Payroll," with columns headed up for the five buildings; there is not a column on that page.

There is a sheet of "I.C.A.," which is the employees'—which is the Social Security. That is broken out to the five buildings, as well as the office, which will give the amount of expense attributable to the Social Security for the employees of each building.

The same is relative to the sheet marked "State Unemployment Insurance, Employees." That is broken out into the five buildings.

There is a sheet "Income Tax, Withholding," which is broken out into the five buildings and which will give the information as to the income and tax of those five buildings.

There is the F.I.C.A. sheet, Employers, which is broken out to the five buildings.

There is another sheet "State Unemployment Insurance, Employers," which is broken out to the five buildings.

There is another sheet "Federal Unemployment

(Testimony of Frederick I. Richman.)

in the operation of the individual buildings is possible of ascertainment from that sheet.

There is another sheet headed up "Other Current Liabilities," [468] that has five columns for the buildings, but there isn't a figure on the page.

There is another sheet, "Key Deposit." That has five columns headed up for the five buildings, but there is not a figure on the page.

There is a sheet "Trust Deeds Payable," and it is loaded with the "Pacific Mortgage Corporation."

Q. (By Mr. Enright): That is the only trust deed payable?

A. That is correct. It shows here as the check being dated February 28th, which was the payment upon the Oliver Cromwell loan.

There is a sheet "Advance Rentals," and it has five columns headed up for the five buildings, but there is not a figure on the page.

There is a sheet "Deposits Held," which has five columns headed up for the five buildings, but there is no figure on the page.

There is a sheet "Reserve for Contingencies," that has nothing on it.

Q. I think that is adequate, Mr. Richman.

A. Over half of the remaining sheets, I would say, have nothing on them except a heading.

Mr. Whyte: I wonder if I might be permitted to take the witness again on your line for in-

mony of Frederick I. Richman.)

Voir Dire Examination

(By Mr. Whyte): Would you please turn to one of those sheets where you found a figure, something—turn to one of the sheets where you found a columnar heading and nothing on the page.

(Witness complies.)

“Prepaid Taxes”? A. Yes.

Are you able to state positively, Mr. Richman, that at no place in the books kept by the Receiver does anything appear for prepaid taxes? In other words, this is a ledger you are looking at, is it not?

That is correct.

Is it your testimony that at no place in the Receiver's accounts is the subject of prepaid taxes mentioned?

Well, they head up a page right at that point (indicating).

Perhaps I didn't make my question clear, Mr. Richman. Again I will inquire whether or not this book is the ledger.

I haven't been able to find anything in the receipts or disbursements or journal relative to prepaid taxes.

Have you in every instance in which you testified [470] there is nothing on these pages, which are headed with columns, and a ledger, looked at in any of the books kept by the Receiver, the jour-

(Testimony of Frederick I. Richman.)

There is no entry on this sheet here, "Accounts Payable," which has five columns for the building. It is not set up.

The figure I am referring to appears in the journal of the Receiver's books. Journal 2, "Accounts Payable \$3,827.66" is not reflected on the ledger sheet of the accounts payable.

Q. Is that the journal, this black book?

A. That is the journal and cash receipts and cash disbursements.

Q. Very well. Let's start back here at 1, the first, where you say there is something, that figures are shown on the page. Will you go back to the first here?

A. (Witness complies.)

Q. Begin at the point you say there are unnumbered headings and there is nothing shown on the page.

Mr. Enright: This is voir dire examination of this witness, and I would like to develop my point.

My point is that the Receiver is claiming he rendered services, page 5, line 15, and made plans for revision of the accounting system, and I want to demonstrate he didn't render any such services.

The Court: All right. I didn't understand exactly what Mr. Whyte had in mind. I think what he is doing now is properly cross examination and not voir dire.

mony of Frederick I. Richman.)

(By Mr. Enright): Now, directing your attention, Mr. Richman, to the Receiver's testimony in his petition concerning rendering services in auditing tile, did you make an examination of his books, to see what you could find were base entries to support his page 5, line 9 of his Petition, where he says that he rendered services in regard to the tile in 409 apartments? A. I did.

What did you find?

The only bills that were—he had paid for work amounting to \$61.65 and \$12.00 for tile

That is \$73.65? A. Yes.

Now, what did you find in auditing or checking his records, to see what he expended or paid out for the amount of reconditioning stoves per unit or per

Well, I found out he sent out stoves to—many rebuilt stoves to be reconditioned. One at Canterbury [472] and two at the Fountain Manor in December, and then again in December at one at the Fountain Manor and two at the Iron Arms at \$25.00 apiece for reconditioning. His testimony was \$56.00 would be the reasonable cost at the time he obtained this order for reconditioning. A. That is my recollection.

Now, directing your attention to page 9, line

(Testimony of Frederick I. Richman.)
into escrow instructions at this time. I think I
say that—perhaps we can agree upon it.

The Court: I think you can agree on many
these things at the pretrial conference.

Mr. Camusi: Yes.

The Court: In fact, I was hopeful you would
agree upon so much the matter might be submitted
upon an afternoon's stipulations. [475]

Mr. Enright: I will certainly endeavor on my
part to do so.

I would like to offer in evidence—I understand
there is no objection—the application to the State
Control Board, which is a part of the Receiver's
files or formerly Mr. Richman's file.

The Court: It will be received.

The Clerk: Defendants' I in evidence.

(The document referred to was marked
Defendants' Exhibit I and was received in
evidence.)

Mr. Enright: That completes my direct examination.

The Court: All right. We will resume the trial
of this case tomorrow at 9:45. We will recess until
then.

(Whereupon, at 4:00 o'clock p.m., Monday

June 7, 1954, an adjournment was taken until

Tuesday, June 8, 1954, at 9:45 o'clock a.m.)

BARNEY MANALIS

as a witness on behalf of the defendants,
g been first duly sworn, was examined and
ed as follows:

e Clerk: Please be seated.

ur full name, sir?

e Witness: Barney Manalis.

Direct Examination

(By Mr. Enright): Were you associated in
anner with the Oxyaire Company during the
l October 1, 1953, through February 1954?

Yes, sir, I was.

What was the capacity of your association?

Vice president.

I show you Exhibit I in this proceeding,
ask you if you are familiar with the transac-
vidence by Exhibit I? A. Yes.

An application for it.

Yes, sir, I am.

That involves one of the five apartment
s—let's see, which one does this involve?

On Normandie. That would be the Crom-
I believe.

418 South Normandie. A. Yes.

I want to direct your attention to the issu-
of a permit and approval which were received
r. Roy E. Hallberg shortly after being mailed
by Mr. Fisher about December 5, 1953.

(Testimony of Barney Manalis.)

A. We were so advised, yes, sir, but we had not received them.

Q. What did you do, if anything, in connection with the performance of that contract in the installation of those facilities after being so advised?

A. We immediately contacted Mr. Richman to find the approved plans of the Air Pollution Control District, if they had been sent to him.

He advised us they had and had been turned over to Mr. Hallberg, who was the Receiver for the Oliver Cromwell Apartments.

Q. Did you later attempt to or contact, in any manner contact Mr. Hallberg?

A. Quite a few times, yes, sir, but never successfully.

Q. Did you talk to anyone at the office or the Oliver Cromwell office of the Receiver?

A. Yes, a Mr. Roy Harrison.

Q. Can you fix approximately when it was that you talked to him concerning this subject matter, that is, the first time you just referred to here?

A. Well, after we were notified that the approval had been sent through from the Air Pollution District, and calling Mr. Richman, we then tried to contact Mr. Hallberg and was put in touch with Mr. Roy Harrison.

He advised us at that time that as the federal receiver for the apartment house he was not bound by the same rules as the local receiver.

imony of Barney Manalis.)

Now, I direct your attention to Exhibit E, a [480] letter dated January 22, 1954. Did the letter come to your attention as an officer of Air Pollution Control, Inc., 357 North La Brea Avenue?

Yes, sir, that was addressed to me and I received it.

Now, bearing in mind the date there, January 22, 1954, did you have a conversation prior to that time with Mr. Hallberg or Mr. Harrison with reference to this——

About a week or ten days prior to that we had a telephone call, or I did, rather, from Mr. Harrison, that they had been cited at the Oliver Oliver well and for us to proceed with the contract installation.

We advised Mr. Harrison at the time we couldn't do it because we had not received the approved blueprints from the Air Pollution District that they had sent to Mr. Richman, who in turn had turned them over to them.

Was there any discussion during that conversation or a later conversation concerning the substitution of materials to be used in the installation?

Yes, at that time one of the necessary component parts of our unit was an inconel metal that

(Testimony of Barney Manalis.)

definite time for the [481] starting of the installation.

Q. Later was the contract performed?

A. Yes, sir.

Q. And the job completed? A. Yes,

Q. Were the materials available and under your control in December to perform this contract?

A. Oh, yes. Yes, sir, we had it in stock, a matter of fact.

Mr. Enright: You may cross examine.

Cross Examination

Q. (By Mr. Whyte): Mr. Manalis, are you connected with Air Pollution Control, Inc.?

A. Not actively, no, sir.

Q. When did you leave that concern, sir?

A. Approximately two months ago.

Q. That would be sometime in April of 1954?

A. That is right. As a matter of fact, April 28th was the terminating date.

Q. You mentioned a moment ago having been in short supply on a particular type of metal. I think you used the word "inconel", is that correct?

A. That is correct.

Q. How is that spelled, Mr. Manalis? [482]

A. I-n-c-o-n-e-l.

Q. When you talked with Mr. Harrison,

mony of Barney Manalis.)

It was at that time that you told him the metal was in short supply?

That is right.

How long was it before that metal became available to you?

As near as I can recollect, within the next three weeks or maybe four. We found some of the suppliers that wasn't bound by government priority. That is how we were able to get it.

Do you recall talking to me as attorney for Hallberg over the telephone sometime during early part of February, during the course of conversation you told me that metal was unavailable?

I don't believe I know your name, sir.

I am John Whyte.

Well, I do remember a conversation with Mr. Whyte. At what time, I am a little hazy.

Very well. Then your testimony is that some time prior to January 15th, for a period of one to four weeks, the inconel metal, which was needed for this installation [483] at the Oliver Hill, was not available to your concern, is that correct?

Enright: To which objection is made. It is the statement of the evidence, that the material was not short two or three weeks before January 15th.

(Testimony of Barney Manalis.)

Mr. Whyte: I will reframe the question, Honor.

The Court: All right.

Q. (By Mr. Whyte): Is it your testimony for some time prior to about the middle of January 1954, and continuing for a period of three to four weeks, the inconel metal, which you needed for the installation of this incinerator equipment, was not available to your concern?

A. Well, the time prior to January 15th, I don't think it could have been any more than ten or two weeks at the most.

Q. Ten days to two weeks?

A. Approximately. In other words, it was right after the end of the year that this government directive came out freezing inconel metal and putting it on priority.

Q. Let's see if I have your testimony correct. For a period of from ten days to two weeks prior to January 15th, [484] and for the period of three to four weeks following January 15th, inconel metal was unavailable to your concern?

A. I think the restriction went even longer than that. We were able to find what we did that wasn't governed by priority.

Q. May I have an answer to my question, please, Mr. Manalis?

mony of Barney Manalis.)

not available for installation of the incinerator

Oliver Cromwell, is that right, sir?

Approximately.

Thank you. You have also told me for a period from ten days to two weeks prior to January 5th the same situation obtained, is that correct, sir?

That is right, sir, yes, sir.

Thank you. The time you talked to Mr. Harrison or about the middle of January 1954, did you tell Mr. Harrison either in substance or effect that you would get in touch with the Air Pollution Control District and attempt to do something about the warning notice that had been issued?

Yes, sir, I did. And we contacted the department there. We were powerless to do anything in response to a citation that had been issued, that the company would have to appear. We so notified Mr. Harrison. [485]

Didn't you tell Mr. Harrison or Mrs. Hall that you had contacted the Smog Control Authorities and there was nothing to worry about, Manalis?

A. No, sir.

You never made that statement?

Definitely not, not at that time. Are you referring to——

I am referring to the middle of January.

(Testimony of Barney Manalis.)

Mr. Witness. He is talking about a warning notice.
Do you understand?

The Witness: Yes, I do.

Q. (By Mr. Whyte): That document should be in evidence. Perhaps we can refresh your recollection.

Mr. Whyte: Do you have that, Mr. Clerk?

The Clerk: Which exhibit?

Mr. Whyte: You will have to let me see your exhibits.

Mr. Enright: It is not in evidence. Here (indicating).

Mr. Whyte: Thank you.

Q. (By Mr. Whyte): Mr. Manalis, I show you a notice on the stationery of Air Pollution Control District, dated [486] January 13, 1954, which bears the notation that:

“You are hereby charged with violating Section 24,242 of the Health & Safety Code of the State of California by discharging smoke in excess of that allowed from chute fed incinerator,”

that notice being directed to the Oliver Cromwell Apartment Hotel.

Is it with reference to that notice that Mr. Harrison called you on or about the 15th of January?

A. That is right, sir, yes, sir.

Q. It was in response to that call that you talked to the Air Pollution Control Authorities?

imony of Barney Manalis.)

As near as I can remember now, we expected that we had the prints in operation—the ones approved, rather, which they knew. And that we were told to go ahead with the installation of the equipment.

And as near as I can recollect right now, when I was contacted at that time said it probably would be all right for K. to go ahead.

Did you tell the Smog Control authorities, or did you talk to them on or about January 15th, that your company was in short supply of this type of metal?

I may have, sir. I wouldn't swear to it.

It is your testimony that they told you it was all right to go ahead?

Well, we had the approved plans to go ahead, and they said all right, sir.

As a matter of fact, as of January 15, 1954, we couldn't have gone ahead without that metal, and that's true, you, Mr. Manalis?

Not and complete the installation, no, sir.

Whyte: No further cross examination, your honor.

Redirect Examination

(By Mr. Enright): As I understand it, Mr. Manalis, you did have the materials throughout the

(Testimony of Barney Manalis.)

Q. (By Mr. Enright): Did you have this material in supply in the month of December?

A. We stocked it, yes, sir.

Mr. Enright: No further questions.

Mr. Whyte: No questions.

The Court: May this witness be excused?

Mr. Enright: Yes, we would appreciate that.

The Court: Thank you, sir.

(Witness excused.) [488]

FREDERICK I. RICHMAN,

called as a witness on behalf of the defendants, having been previously duly sworn, resumed the examination and testified further as follows:

Mr. Whyte: Mr. Enright, unless you have any objection, perhaps we had better put this Note dated January 13th in evidence.

Mr. Enright: I have no objection.

Mr. Whyte: Very well. This will be offered as the Receiver's Exhibit next in order.

The Court: Received into evidence.

The Clerk: Receiver's 4 in evidence.

(The document referred to was marked as Receiver's Exhibit 4 and was received into evidence.)

DATE

19

ER CROMWELL APT. HOTEL

PHONE NO. Du 7 2261

(NAME OF COMPANY)

8 S. NORMAN DIC

LA

CITY

(CITY OR COMMUNITY)

(STREET, NUMBER, ZONE)

5A ME

CITY

(CITY OR COMMUNITY)

(STREET, NUMBER, ZONE)

YOU ARE HEREBY CHARGED WITH VIOLATING SECTION 24242
OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFOR-
NIA BY DISCHARGING SMOKE IN EXCESS OF THAT ALLOWED
FROM CHUTE FED INCINERATOR

WILLIAM ROBERTS

WILLIAM MC CONNELL

MGR

GORDON P. LARSON
DIRECTOR

By Philip Roberts

rs

ZONE

76N590 10/53

80

RECEIVER'S EXHIBIT No. 4

Log 8-3111

mony of Frederick I. Richman.)

Cross Examination

(By Mr. Whyte): Mr. Richman, I believe testified on your direct examination during the immediately preceding December 1, 1953, you received management compensation for your service in connection with the former Richman Trust, amounting to ten per cent of the gross income from the properties, is that correct, sir? [489]

Ten per cent of the gross income, excluding overhead items.

And out of that, I believe you testified that you paid a salary to Mr. Harrison, is that true?

I paid all overhead expenses. Salary to Mr. Harrison, office rent, telephone, stationery, typewriter, adding machine.

How much salary did you pay to Mr. Harrison?

A. \$450.00 a month.

In addition you paid your own office rent?

That is correct.

Telephone? A. Yes.

Typewriter? A. Yes.

Stationery? A. Yes. Postage.

Postage.

Court: You maintain an office other than your law office in the Subway Terminal?

Witness: No; it was the same office.

(Testimony of Frederick I. Richman.)

I understood you to say that you organized corporations, [490] is that right, Mr. Richman?

A. On occasions, yes.

Q. Did you also draw contracts for clients

A. Yes.

Q. What tax work, if any, did you do for our clients?

A. Prepare tax returns for a number of clients handled with the then Collector of Internal Revenue, or, the agent in charge.

Q. You had other books of account in the office that reflected the affairs of other clients, Mr. Richman? A. Yes.

Q. Did Mr. Harrison keep up those books during the course of his duties as your secretary?

A. He did.

Q. You dictated a letter to another client, in reference to the formation of a corporation or the drafting of an agreement, did you dictate that letter to Mr. Harrison?

A. Mr. Harrison took my dictation when he was the only one in the office. For a time I had a stenographer that took dictation and typing.

Q. For how long was Mr. Harrison your assistant?

A. From about August 1952 on.

Q. You were away from the office and away from the——strike that. [491]

mony of Frederick I. Richman.)

I was.

When did that litigation commence?

January 1952.

It continued until, say, until within a few
s ago, when this case was settled?

This is still part of it, I believe.

During the course of that time, did you con-
sult with your attorney in preparation for the trial
of that action? A. I did.

Were those consultations rather extensive?

Depending upon the court hearings that were
going up.

When did those court hearings take place,
Richman?

Very frequently. I couldn't tell you, without
going over, to find out the number of times; the
register.

Were you present in court at all those hear-
ings substantially all?

Not all of them, but a good many I was
at.

When did the actual trial of the case take
place? [492]

It started in May 1953 and went for, I be-
lieve, about eight days and then was continued to
another number and went for about 12 days.

Between those intervals you were in con-

(Testimony of Frederick I. Richman.)

rents which were collected during a comparable period, December 1, 1952, to February 28, amounted to some \$97,404.58.

Do you recall those figures, Mr. Richman?

A. Whatever the figures were, whatever I filed to.

Q. I further understood you to testify that the figures, that the figures showing the rents collected during the period December 1, 1953, to February 28, 1954 were \$95,066.83. Is that right, Mr. Richman?

A. Whatever the figures were; those figures were taken from the Receiver's report, as was the amount shown on the Receiver's report, then to which I added the \$1,290.59, to arrive at a total of \$95,066.83, being the rents the manager collected during February, but which the Receiver did not collect.

Q. I understand, Mr. Richman. So that the rents for the three-month period, December 1 to February 28, '53, exceeded by approximately \$2,337.75 the rents collected [493] during the period December 1, 1953, to February 28, '54, is that right?

A. That is correct.

Q. Is it your testimony that the rents collected from the apartment houses during your regim as trustee were somewhat or substantially in excess of those collected by Mr. Hallberg during his term of office?

imony of Frederick I. Richman.)

You made the statement, during the course of our direct examination, you never had a bank account like Mr. Hallberg, to do business with, is that right?

No, that is not correct. I said I never had a bank account like his, except during the time that the Villa Carlotta had been sold.

Whatever your statement was, I took it as close as I could, and I had you quoted [I never had a bank account like that to do business with.]

In substance, that is your testimony, that your bank account wasn't comparable to the one Mr. Hallberg was managing, is that correct?

That is correct. I never operated with that cash in the bank except during the period immediately after the sale of the Villa Carlotta.

Yet it is your testimony that for a comparable period [494] of time the rents collected under your management were several thousand dollars in excess of those collected by Mr. Hallberg, is that right?

For the period 1952-53, for the comparable period that the time the Receiver was in.

Now, you stated that you saw me at the hearing in the Municipal Court on or about February 1st, and I rendered no services whatever at that hearing.

(Testimony of Frederick I. Richman.)
with Mr. Enright in requesting a continuance
the matter for some three weeks?

A. I heard Mr. Enright request for the th
making the statement on there, and you said
was agreeable to you.

Q. How long were we all present there in
Municipal Court that morning, approximately

A. I don't recollect. He had other matters
the calendar that were heard first, and c
through. The particular matter here took a
three minutes.

Q. We were there somewhere in the neigh
hood of three-quarters of an hour, were we,
Richman, either waiting around or hearing? [

A. I couldn't say.

Q. You mentioned a conversation which
had with Mr. Hallberg shortly after Decembe
1953, in which you claim that he told you he
operating a 40-unit apartment building, is
right? A. That is correct.

Q. Are you certain he didn't tell you that
was a 14-unit building, Mr. Richman?

A. No, it was a 40-unit on East Colorado.

Q. You are positive of that, sir?

A. I am.

Q. He told you that the apartment building
on East Colorado Street in Pasadena?

A. He did. I was particularly cognizant of

imony of Frederick I. Richman.)

You were familiar with this building Mr. Hallberg told you he was operating?

He didn't tell me what building it was. I was familiar with a certain section of East Colorado. I was wondering whether it was the same building I had been looking at.

I asked him what the address was, and he told me that he had been told not to discuss matters with me. [496]

You called Mr. Harrison quite frequently during the course of the receivership, didn't you, Frederick I. Richman?

I never called Mr. Harrison except to report something that had come in to me, that was reflecting on my credit, and that was all. I would receive the assurance it would be taken care of. Each time I asked for Mr. Hallberg; he was not in.

Did you testify, in your direct examination, that you went out to see Mr. Harrison, not with reference to your credit, but with reference to this subpoena citation that had been issued on a Saturday afternoon? A. I certainly did.

Didn't you further testify that you talked to Mr. Harrison on two or three other occasions and that you got information from him concerning the operation of the trust?

(Testimony of Frederick I. Richman.)

Q. Mr. Harrison had been your bookkeeper in your office for about how long, Mr. Richman?

A. He had been my secretary since August 1952.

Q. How much longer than that had he been in your office, if at all?

A. I think about two months. My former secretary [497] stated she was leaving and would take another. He came in there and worked under her for about two months.

Q. Mr. Harrison had testified on your behalf during the course of this litigation, had he not?

A. No.

Q. He never appeared in court for you?

A. No.

Q. You mentioned the public liability insurance policy covering these five apartment houses. I believe the question was put to you by Mr. Ennis as to whether or not any of your property was covered by that policy, and your answer was yes. Is that right? A. That is correct.

Q. Would your answer be no if I asked whether or not any of your household employees were covered by that policy?

A. My answer would be no, too.

Q. Will you state that under oath, Mr. Richman? A. On the liability policy.

mony of Frederick I. Richman.)

Mr. Camusi have brought records here. What is here I don't know.

Whyte: I would like to ask Mr. Camusi's date [498] present here if he would undertake the policy of the compensation insurance, was in force immediately prior to Mr. Hall-term of office and produce it here in the next a, if that is convenient.

Powsner: It may be necessary to get it from dall, however.

Whyte: Thank you very much.

(By Mr. Whyte): You mentioned the fact, you looked over the files, Receiver's files, the were all scrambled up and jumbled up. Is that Mr. Richman? A. That is correct.

When did you look at those files?

The early part of March 1954, at the Oliver vell.

You say the early part of March. Just when I mean?

No, I believe it was March 30, 1954. I have tation in my diary.

March 30, 1954? A. Yes.

At that time those files were in the possession der the control of Mrs. Tidwell, were they

Well, they were under the control of the

(Testimony of Frederick I. Richman.)

Q. Let's not fence around with one another Richman. You know that, do you not, after sold your half interest in these properties to Tidwell she took over the books of account and the properties? A. No, I do not know.

Mr. Enright: I object on the ground the tion is argument as to what constitutes "fence around."

The Court: Overruled.

The Witness: I didn't know she took over books of account and the records. I had been informed previously that any records of the Receivership that I had wanted to see, I would have to obtain a court order for it. That any records prior to the receivership, I could see any time by going there.

Q. (By Mr. Whyte): In any event, when you looked at these records and claimed you found bills in a jumbled condition, you found them in such condition on March 30th of 1954?

A. That is correct. However, I was given information by Miss Marr of Mr. Udall's office, stating that they didn't know what they were, they were the Receivers' files, and those files were in just as jumbled a condition as all the others.

Q. Your permission to examine those files on March 30th came from Mr. Udall's office?

A. Came from Mr. Martin's office. [500]

mony of Frederick I. Richman.)

y after the 1st of December, 1953, in which
old us about your management fee for No-
r 1953, is that right, Mr. Richman?

That is correct.

Did you ever submit a bill to Mr. Hallberg
sting payment of that fee?

I was never requested to submit a bill. I did
bmit one. On the occasions I talked with Mr.
erg, he said, well, give him time to get
htened out and it would be paid.

You say you never did submit a bill to him?
No.

You never demanded payment of that fee
Mr. Hallberg?

I did not know what amount the fee would
cause it was based on the income in Novem-
nd he had all the records of November. He
have to compute it.

Whyte: I have no further cross examina-

Redirect Examination

(By Mr. Enright): Concerning the subject
r of your 10 per cent under the terms as
ave stated it, did you from time to [501] time
a operating moneys for the operation of the
on your own credit? A. I did.

And what was the maximum amount you
available for the operation of the

(Testimony of Frederick I. Richman.)

fied as to the increase in the value of the assets. Did you have you? I think you did. Is that your recollection? A. I don't recall.

Q. What was the approximate value of the assets of the trust when you became trustee or agent on January 1, 1946?

A. Approximately \$375,000.00.

Q. What was the value of those assets as of February 25, 1954?

A. About \$1,200,000.00.

Q. That is, the plaintiff paid \$600,000.00 for one-half of the assets, is that right?

A. That is correct.

Q. During the time that you were agent, manager of these assets, did you ever employ more than one person to work in your office, in which office the trust was being administered? [502]

A. On occasions I have had four or five employees in my office. When the trust litigation started I cut down on all outside work and concentrated on the defense of the trust litigation and very small amount of other business.

Q. The 10 per cent fee was agreed to at the time you conveyed one-half the assets in the trust, isn't that correct?

A. No, the 10 per cent fee was agreed to approximately a year and two months prior to the time the trust was created.

Q. At the time the contract, the trust was created,

imony of Frederick I. Richman.)

Whyte: I object to that on the ground the
ments will speak for themselves, as to what he
buted and what agreement was reached.

Court: What about it?

Enright: We are merely introducing re-
evidence as to the circumstances of the 10
ent fee. One of the circumstances is that the
ss, who received the 10 per cent, conveyed
he assets into the trust.

Court: What about that part of the objec-
which is based upon the well-known rule that
ocument should speak for itself?

Enright: I will introduce the trust agree-
I think it is a part of the records. I will
the trust agreement in evidence. I do not
t physically here, but [503] it is a part of the
records.

Court: We will take notice of it, as it ap-
in the court records.

Enright: May it be marked an exhibit?

Court: Yes, give it a number, Mr. Clerk.

Clerk: It will be Defendants' J in evidence.
(The document referred to was marked De-
endants' Exhibit J and was received in evi-
ence.)

(By Mr. Enright): Directing your atten-
to Exhibit J, did you, as trustor under the

(Testimony of Frederick I. Richman.)

available, unless the court files are here. I assume you were familiar with the trust agreement, Whyte.

The Clerk: Do you want me to get it from clerk's file?

The Court: If it is not here and you need the clerk will get it from the Clerk's Office. The files have been so voluminous he doesn't carry files in here.

Mr. Enright: Do you need it now, Mr. Whyte?

Mr. Whyte: If you are going to examine a witness on it, I have a right to see it and a right to cross examine on it. [504]

I may say I think this is all immaterial, any

Mr. Enright: But it is very material to us. When you arrive at 10 per cent. You contribute half the property it is a whole lot different than a person contributing nothing.

I will direct questions to another subject matter.

The Court: Well, Mr. Enright, of course, I am quite familiar with that trust agreement. If you want to find out things in it for my consideration I will consider them whether Mr. Richman testifies upon them or not.

Mr. Enright: I am quite sure the trust agreement does not recite, as a part of it, the inventory of the property conveyed. In other words, it

imony of Frederick I. Richman.)

in error. But that is what I have to find out, ss, from the document.

m quite sure it is within the knowledge of people, and I supposed Mr. Whyte's, that Mr. an did convey half of the assets into the That is the point——

e Court: Really, I don't see that makes much ence on computing what compensation shall owed Mr. Hallberg.

Enright: If that could be agreed, that it was t Mr. Richman did convey half the assets, I proceed on [505] another subject matter. If why,——

e Witness: I believe the books of the Rich-trust are here and will show that in the books.

(By Mr. Enright): Is that an answer to my ment, Mr. Richman? A. Yes.

e Court: We accept that statement as evi- .

. Whyte: I beg your pardon, your Honor?

e Court: I commented that, although it was ement, rather than in answer to a question, we t it.

. Whyte: I didn't hear the statement.

e Court: All right. The reporter will read it. (The record was read.)

e Court: What they will show is Mr. Rich-

(Testimony of Frederick I. Richman.)

sure he also used the term "public liability insurance" in connection with the subject matter and whether or not your property or your employees were covered by either one of these policies.

If his question contemplated two different policies, would there be any difference in your answer?

A. Yes.

Q. Let's get this straightened out, so we understand. [506]

A. The public liability insurance was entered for the trust. It included no coverage for me whatsoever or anything that I owned. The policy belonged to the trust.

The compensation policy was my personal policy and the trust employees were picked up through my personal policy on that. That policy could not be transferred to the Receiver, because it would leave me open with my personal employees. So the Receiver took out a new compensation policy, paid a deposit of \$400.00 for it, to be used up for premiums, with a quarterly audit, which was a matter that was discussed the other day, with a refund on that deposit. It is money belonging to the Receiver and under his control, subject to the amount he used.

Q. As to the testimony the other day about the Receiver stopping payment on one of the insurance policies, which policy was that?

mony of Frederick I. Richman.)

That is correct. He set it up as an account
e as of December 31st and paid it sometime
uary.

Did you have any conversation with him
that time that he stopped payment, or par-
e in a conference with him, with any other
, on that subject matter as to whether or
ur property was covered by that public lia-
policy? [507] A. I did.

You did? A. Yes.

Is that the conference had at Mr. Dulley's
that you have already testified concerning?

That is correct. That was a conference at
ulley's office on December 4, 1953.

Enright: I have no further questions.

Recross Examination

(By Mr. Whyte): I would like to have some
ation on this 10 per cent of gross that you
d, Mr. Richman. Let's take the year 1953
example.

ing that year your 10 per cent gross, assum-
u had been in office through December, would
mounted to something in the neighborhood
000.00, would it not? Not figuring the deduc-
for a moment. I am talking about the total
ould receive 10 per cent of the gross for.

(Testimony of Frederick I. Richman.)

A. I think we can get at it quicker from the return that was filed as an exhibit yesterday.

Q. Mr. Richman, I am going to take a page of a year prior to December 1, 1953. In other words, from December 1952 [508] through November 31, 1953.

I show you this book of account, pages headed "Management Fee," and the following figures appear in the columns:

December fee \$3,321.81; January fee \$3,280.03 or it may be \$3,380.03 here. Which is that, Mr. Richman? A. That is "2." It is "32."

Q. Then there is a notation I can't read here.

A. "Adjustment."

Q. "Adjustment" to January 31, '53. Is that an addition to the fee up above? A. Yes.

Q. February fee \$3,082.07; March fee \$3,352.00; April fee \$3,083.30; May fee \$3,026.57; June fee \$2,972.29; July fee \$3,176.35; August fee \$3,026.57; September fee \$3,068.89; October fee \$3,004.22.

Now, can you tell me where the fee for November is set up on the books, which you have not collected?

A. It is not set up. The Receiver should have set it up or paid it or charged it, but he has nothing about it, other than show it in his report as a payable of the receivership.

Mr. Whyte: I wonder, for the purposes of e

mony of Frederick I. Richman.)

Court: Yes. I don't think it is pertinent to inquiry. I am wondering why you are laboring. It is something that is perhaps going to be immaterial to the controversy between Mrs. Tidwell and Mr. Richman, but how does it have anything at all upon what compensation Mr. Hallberg is to have?

Whyte: I think the figures will show, your Honor, that Mr. Richman received, for comparable period, somewhere in the neighborhood of \$40,000 to forty thousand dollars.

Court: He received that under a contract which the court has found to be unconscionable and void.

Whyte: I understand, your Honor. Then I will not pursue the matter any further, if the court finds it is immaterial.

(By Mr. Whyte): Just one or two questions, your Honor, about Mr. Richman.

Q. When I was at your office with Mr. Hallberg in the early part of December of '53, I seem to recollect that you had something on your door which indicated that you had a mortgage company or office, is that true?

A. That is correct, Consolidated Mortgage Com-

Q. Were you the president of that concern?

(Testimony of Frederick I. Richman.)

A. That was just about the only one since litigation started. I resigned my interest in Mc Machine Works and Wood Ice and Gas Company to take on the litigation.

Q. You were carrying on that mortgage company business for about how long prior to December of 1953?

A. I became president in January 1950.

Q. Mr. Harrison looked after the books of mortgage company? A. He did.

Mr. Whyte: I have no further recross examination.

The Witness: Could we have a recess?

The Court: We will take a short recess.

(Witness excused.)

(Short recess taken.)

Mr. Enright: Defendant rests.

Mr. Whyte: There will be a short redirection examination of Mr. Hallberg, your Honor. [511]

ROY E. HALLBERG

recalled as a witness on his own behalf, has been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Whyte): Mr. Hallberg, did you

mony of Roy E. Hallberg.)

ets which Mr. Richman had made with the
ollution Control, Incorporated?

I certainly did not.

Were you present in the court when Mr.
an testified that he had a conversation with
n or about the 4th of December, while you
traveling around to the various apartment
, during the course of which you allegedly
im you were operating a 40-unit apartment
ng on East Colorado Street? Did you hear
estimony? A. I certainly did.

What, if anything, did you say to Mr. Rich-
n that connection?

I said I had a 14-unit apartment building.
ere riding in a car at the time he asked that
on.

aid, "A 14-unit building and it is off East
do." I didn't say where.

Speaking now of the Western Arms Apart-
building and Mrs. Kennedy, the manager,
rs. Kennedy have instructions [512] as to
to do in the event the refrigeration system
e defective or operated improperly?

Yes.

What instructions had you given her?

To call the refrigeration company whose
she had on file and whose telephone number

(Testimony of Roy E. Hallberg.)

frigeration but other services in the apartment houses which might run into difficulty?

A. Yes.

Q. What other services?

A. Plumbing, for instance.

Q. There was some testimony by Mr. Rich to the effect that utility bills, particularly due the month of January, were not paid promptly when due.

Can you explain how that came about, Mr. Hallberg?

A. Well, I believe he was referring to December bills, wasn't he?

Q. Either December or January.

A. Well, we had a \$17,000.00 tax bill to pay in December. We had very little cash when we took over the building. And we did a little juggling with some of those [513] accounts payable in order to assure ourselves of enough to cover the tax payment.

Q. Because of the large tax payment that you mentioned that you deferred payment of the utility bills?

A. That is correct.

Q. I direct your attention to the general ledger being one of the books of account which was examined by you during your period of receivership, and I am going to start about the point where Mr. Richman testified there were certain blank pages in the

mony of Roy E. Hallberg.)

for five different apartment buildings, but
ures appear on that page.

you explain that to the court, if you please?

Why, yes. We set up the account here, not
for the immediate records—you understand,
books were mostly kept on a cash basis. We
ot go back into the previous management to
up the unexpired insurance and set it up.

Enright: I move to strike the witness'
ment "We set it up", as a conclusion on his

Court: Granted. Show who did it, if you
it is important.

Witness: I worked on that and directed at
time [514] Mr. Harrison to set this up, so
these entries could be made at the proper time.

(By Mr. Whyte): When was the proper
to make any entries in this unemployment in-
ce premium account?

Well, your unemployment insurance pre-
s are paid in advance. They are taken from
payments made to the individual people who
working for the trust. And at the end of three
as those are supposed to be picked up. We
t reached that period yet.

Enright: I move to strike the answer on
round it is a conclusion of the witness, when

(Testimony of Roy E. Hallberg.)

Mr. Whyte: The last statement was, "We had not reached that period yet."

Q. (By Mr. Whyte): When would that period have been reached, Mr. Hallberg?

A. In March.

Q. Sometime after February 28, 1954?

A. Yes.

Q. Turning to the next page in the ledger, which appears to be blank, headed "Prepaid Taxes," there is a breakdown for Canterbury, Fountain Ma LaLoma, Oliver Cromwell, [515] and West Arms, but no figures appearing on the page.

Can you explain why that page happens to be blank, Mr. Hallberg?

A. That was just put in there for the time that account might be needed. We hadn't reached a point where it was needed.

Q. Is it good bookkeeping practice to set up an account for prepaid taxes in connection with keeping books of account of this character?

A. It is quite——

Mr. Enright: Objection is made on the ground it calls for a conclusion of this witness, what bookkeeping practices are.

The Court: You might qualify him. I think I did it once before, I am not sure. Let's be satisfied to qualify him.

mony of Roy E. Hallberg.)

graduate? A. Northwestern University.

What degree did you receive there?

Bachelor of Science in commerce.

What training, if any, did you have in accounting?

I did two years' public accounting work out of the field.

What accounting experience have you had in the field? [516]

Oh, the experience I have had here is carrying on our own records and our own books and the companies I was with, Hall Industries—I set that up in Missouri—and at the present time I do not go into books or records of various companies.

Did you keep the books on account at the Construction Tooth Corporation?

I did that.

And your two years of public accounting was out in the field, where was that carried on?

In Chicago.

Whyte: I submit that is sufficient qualifying for your Honor. The man knows what good accounting practice is.

Court: Ask your question then, based upon the foundation, and see what happens.

(By Mr. Whyte): Based upon your experi-

(Testimony of Roy E. Hallberg.)

ground it calls for a conclusion of the witness
witness is not qualified.

The Court: Overruled.

The Witness: Ordinarily you try to set up
counts that [517] will be in use sometime during
a fiscal period, and this was one item that
often is used.

Q. (By Mr. Whyte): It is a good accounting
practice? A. It is, definitely.

Q. Turning to the next sheet in the ledger
which is blank, "Utilities Deposits", will you
explain why that sheet is blank?

A. There were no deposits made for utilities
so far as I know.

Q. Is it good accounting practice to anticipate
the possibility there will be utility deposits and
show that entry in your ledger?

Mr. Enright: Same objection.

The Witness: That was put——

Mr. Enright: Just a minute. I object on the
ground it calls for a conclusion of this witness
what is good accounting practice.

The Court: We will have to consider it as
bookkeeping practice, rather than accounting
practice. This man has qualified as to general commercial
administration. He is qualified with regard
to the bookkeeper's level, rather than the accountant's.

mony of Roy E. Hallberg.)

sheet in your ledger to [518] pick up those

A. It definitely is.

The next sheet in the ledger, "Deposits
men's Compensation Insurance", contains sev-
figures, so I will pass over that.

next sheet, "Advances on Conditional Sales
cts". That sheet appears to be blank.

you state why you set up the sheet for
nces on Conditional Sales Contracts" and
is blank?

It was conditional as for the operation of
ilding at—from time to time you may have
a deposit, and there hadn't been any trans-
that required it during our period.

Is it good bookkeeping practice to anticipate
may be advances on conditional sales con-
in connection with the operation of apart-
buildings? A. It is.

Enright: To which objection is made on
ound it calls for a conclusion of this witness.

Court: Overruled. I take it that you would
e same answer as to each one of those pages,
Whyte, so I hope you are not going to burden
cord.

Whyte: I don't wish to, your Honor. I think
some of these pages the answer will be that

(Testimony of Roy E. Hallberg.)

flected in this other book of account which kept.

The Court: Why not proceed to that cl entries then?

Q. (By Mr. Whyte): Let's just go over briefly and you can state whether or not your answer would be the same or whether it would be different, because the entries are reflected in your journal.

Take the sheet "Notes and Accounts Payable" which contains various items on it.

I will pass that.

Mr. Enright: I will object to the question on the ground it assumes a fact not in evidence, he didn't have a journal. His previous testimony was he had a journal.

The Court: You might lay a foundation.

The Witness: There was no previous testimony, there wasn't a journal.

Mr. Whyte: Just keep quiet, Mr. Hallberg.

Mr. Enright: I will stand on the record on the witness' original testimony.

The Court: Let's have a foundation as of this date in any event, so that one can look back at the transcript of the questions you are asking, and lay a foundation immediately before the sequence of questions. [520]

Q. (By Mr. Whyte): Mr. Hallberg, I draw your attention to this large black book. The

mony of Roy E. Hallberg.)

Enright: Object on the ground it calls for exclusion of the witness, as to identifying that as it being a journal or otherwise. It is ob-
jection is attempting to have the witness to testify in opinion it is a journal; he is not qualified.

Court: Can't a bookkeeper testify in his opinion a book is a journal? Objection overruled.

Enright: I don't think so, as a matter of fact.

Witness: This definitely is a journal.

(By Mr. Whyte): Was that book kept in your custody or control during the three-month period of the receivership? A. It was.

Are the entries which are shown therein recitals of transactions which took place at or approximately about the time as they are reflected in the book?

Well, the journal is mostly used for transferring of amounts from one account to another. It isn't a matter of a transaction at all.

Enright: I move to strike——

Witness: Once in a while you do run into corrections that you do put in a journal. But they were mostly [521] closing and things like

(By Mr. Whyte): I didn't make my question to Mr. Hallberg. As to the items which are

(Testimony of Roy E. Hallberg.)

Q. Is this book, which you have identified as a journal, one of the books which was kept in the regular course of your business as the Receiver of those apartment buildings? A. It is.

Q. Very well. Having laid the foundation, I will proceed here with the ledger.

The "Accounts Payable" sheet is blank. Is it blank for the reasons which you have heretofore specified, as to the preceding blank pages?

A. That is correct. Can I elaborate on this?

Your accounts payable on a cash basis, when you do not enter your bills as they come in, but enter them as they are paid, certain times when you want to close out the books you will list them all together and enter them in your journal and from there they are transferred to certain accounts where they are set up. They are afterwards reversed—entries are reversed and it is taken out as they are paid.

Q. I am going through the remaining pages which [522] appear to be blank, and in the interest of saving time——

The Court: Mr. Whyte, where is this important to the immediate inquiry before the court?

Mr. Whyte: The impression was sought to be created by Mr. Richman these books had been set up in a way where pages had been left blank although nothing had been done.

mony of Roy E. Hallberg.)

ank and why nothing is shown on them. I want to go beyond what the court feels is ary.

Court: I don't feel it is necessary. The is given to examining these documents, and I would make a very poor bookkeeper, I have erable theoretical information on the subject.

Whyte: If the court doesn't feel it is necessary that settles the matter.

further examination, your Honor.

Cross Examination

(By Mr. Enright): Mr. Hallberg, you didn't any of these entries in this journal or ledger?

No, I did not. I had a bookkeeper doing that.

Mr. Harrison?

Mr. Harrison and Miss Findeisen, yes. How-

Mr. [523] Harrison did mighty little in that

Oh, he did? Are you familiar with his handwriting? A. Yes.

Are you familiar with Miss Findeisen's handwriting? A. Naturally.

Miss Cosgrove's handwriting? A. Yes.

, can I keep those here?

Whyte: What is this?

(Testimony of Roy E. Hallberg.)

(The document referred to was marked
fendants' Exhibit K for identification.)

Q. (By Mr. Enright): I direct your attention to Exhibit K for identification, and ask you if you can identify the handwriting appearing at the top of it? A. Yes.

Q. Whose handwriting is it?

A. Miss Cosgrove's.

Q. You received that document?

A. Yes, I saw this.

Q. Who is Miss Cosgrove?

A. Mrs. Hallberg. [524]

Q. You received this document about December 22, 1953?

A. I can't tell you the date now.

Q. Approximately that?

A. I wouldn't know. I saw it.

Q. Did you see the Paragraph 7, and I direct your attention to your previous testimony concerning the Oxyaire matter, and reading as follows:

"The Houdry catalyst for the Canterbury-
thur Jan was at the C.A. yesterday wanting
to make measurements. This morning I contacted
Barney Manalis (the man who obtained the
tracts from Mr. Richman). I explained Mr. Hall-
berg's appointment, and told him that both matters
were in suspension for the time being;"

Did you see that?

mony of Roy E. Hallberg.)

Memorandum from Mr. Harrison. Mr. Harrison not here.

Court: It is merely a question of whether it.

Enright: I will offer it in evidence. He has read it.

Court: It will be received.

(The document heretofore marked Defendants' Exhibit K was received in evidence.)

(By Mr. Enright): Do you recollect the one just before Mr. Whyte interrupted?

Will you state it again?

You recollect seeing this Paragraph 7 concerning the installation of the smog control equipments being under suspension for the time being? Yes.

Were you or were you not advised by Mr. Harrison that he had advised Oxyaire to suspend performance of that contract? A. No.

But you saw this document?

The only thing that was being held up for the approval of Mr. Whyte.

You saw the document? A. Yes.

It is from Mr. Harrison, isn't it?

That is correct.

And your wife, Miss Cosgrove, signed it?

(Testimony of Roy E. Hallberg.)

Q. Were you in, about the apartments, during the week [526] of December 22nd?

A. I managed to get there quite often, yes.

Q. On the week end?

A. Sometimes on a week end. Sometimes during the week, as I told you before.

Q. You got there December 24th, the day before Christmas, didn't you?

A. That happened to be one day I was there.

Q. Now, directing your attention to the handwriting in this ledger, will you point out any portion of it that is not in Mr. Harrison's handwriting?

A. I can show you lots of it. There is a page not in his handwriting (indicating).

Q. Now you are referring to February 1954?

A. Here is some more (indicating).

Mr. Enright: May we have that one page—

Mr. Whyte: Let's identify the page for the record here.

Mr. Enright: Are you through?

Mr. Whyte: The witness is referring to a page headed "Month of February 1954", which seems to be page No. 8. This is a ledger?

Mr. Enright: Are you through, Mr. Whyte, please?

Mr. Whyte: I am merely trying to be helpful.

mony of Roy E. Hallberg.)

[527] the record shows what you are talking about.

(By Mr. Enright): Now, Mr. Hallberg, you have a sheet No. 8 bearing an entry at the top, dated "1 of November 1954". A. All right.

Just a moment, if you will, please, sir.

O.K.

That pertains to the expenditures made for the month of February and the expenditures made in your direction on or about March 7th?

This does not contain all expenditures for the month of February.

My question wasn't whether it contained all expenditures for February. It pertains to the expenditures made about March 7th or after the telephone call on a Sunday evening, and you dismissed someone there to issue checks covering business incurred during February, doesn't it?

That is correct, yes.

Now, whose handwriting is that?

Miss Findeisen's.

Miss Findeisen's? A. Yes.

You are referring to page 7, also?

Yes.

Whose handwriting is that? [528]

Miss Findeisen's.

And that involves the expenditures made

(Testimony of Roy E. Hallberg.)

Q. That involved an expenditure on February 1954?

A. That is right.

Q. Who drew that check?

A. That looks like Harrison's.

Q. Yes. And it covers checks down to doesn't it?

A. That is correct.

Q. Now, the checks after check No. 370 drawn by whom?

A. That was Miss Findeisen's.

Q. Was that in her handwriting, the stubs?

A. Yes.

Q. I direct your attention to stubs 372 to Tell me whose handwriting that is.

A. Miss Findeisen's.

Q. The next, 375 through 377.

A. Same.

Q. 378 through 380.

A. Same.

Q. 381 through 383. [529]

A. Yes.

Q. Is Miss Findeisen's?

A. Yes.

Q. 384 through 386.

A. Miss Findeisen's.

Q. Will you turn the pages and state whether or not any of those checks were drawn by Findeisen?

A. Checks are all in her handwriting.

Q. Just a moment. All of them through the of that book, the stubs?

A. Yes, they are.

Q. All right. Now, I direct your attention

mony of Roy E. Hallberg.)

Now, I want to refer back to Citizen's Bank No. 482, the stub. Who drew that check?

Miss Cosgrove wrote that one out.

Did she write out the checks after that date,encing with 483, the check dated March 8,

Will you state that again?

Did Miss Cosgrove draw the checks coming with No. 483 on——

She drew that one.

484, did she draw that one? [530]

She did.

Did she draw all the checks thereafter appearing in this Citizens Bank statement through stub No. 500? A. Apparently she did.

Now, those were the checks covering the approximate six thousand dollars paid after March

A. Yes.

Miss Cosgrove drew those?

She drew those that you—the stubs you showed me there, she wrote.

Now, directing your attention to the stubs Nos. 501 through 508,——

Whyte: Do you want to identify that as a Citizens Bank book, too, Mr. Enright?

Enright: Being stubs Nos. 501 through 508

(Testimony of Roy E. Hallberg.)

The Court: Wasn't that what the man went on his principal case and on this rebuttal he called here to simply give his conversation certain limited few transactions which had testified to against him?

We are not going to reopen the entire examination of his services now. [531]

Mr. Enright: It is to rebut what I conceive be the Receiver's conclusion that he rendered services in preparing these books and records.

I want to demonstrate that he rendered him so far as he is concerned, no services. A Miss Grove drew some checks for him after he, the Receiver, had phoned you, your Honor, on March Sunday evening, and then they went out to and his wife, Mrs. Hallberg, wrote some checks and that, I say, is not rendering services as a Receiver.

The Court: If you will have the various writings identified, I will run through those to see who wrote what.

Mr. Enright: That is what I was doing at every time——

The Court: Let's not take these checks seriously. We will be here all day on this case, and I have jury coming in at 1:30.

Mr. Enright: There are only these remaining checks.

mony of Roy E. Hallberg.)

These were written by Miss Cosgrove, as I before.

Now, directing your attention to check No. What is for \$123.88, is that correct?

That is right. [532]

And that was issued to Jean Findeisen?

That is right.

Was that for payment for her services for long——

Whyte: Again I am going to object. This proper cross examination; outside the scope direct examination.

Court: Sustained.

Enright: I offer to prove through the witness that he has paid a sum of money for the making and issuing of these checks, the services rendered after March 1st, through this canceled check. I will next ask that a check here be marked for identification.

Clerk: Defendants' L.

(The document referred to was marked Defendants' Exhibit L for identification.)

(By Mr. Enright): Directing your attention Defendants' L for identification, do you recognize the handwriting upon that document?

Yes.

Whyte: Same objection, outside the scope

(Testimony of Roy E. Hallberg.)

your attention to the [533] endorsement. W
handwriting is that?

A. Must be Jean Findeisen.

Q. Do you know?

The Court: Do you recognize it?

The Witness: I recognize—it is apparently
her handwriting. I wasn't there when she signed

The Court: It looks like her handwriting?

The Witness: It does.

Q. (By Mr. Enright): She received that
of money? A. Yes.

Q. She rendered services attending to the b
of the receivership for the sum of money evidenced
by this check? A. Yes.

Mr. Enright: I offer Exhibit L in evidence.

The Court: Received into evidence, although
seems to me it is proving what has already been
proven. Generally speaking, it is sufficient to prove
a matter once.

(The document heretofore marked Defendant's
Exhibit L was received in evidence.)

Mr. Enright: No further questions.

Mr. Whyte: I have just two questions,
Honor.

Redirect Examination

Q. (By Mr. Whyte): Mr. Hallberg, you re
lect about when you gave me, as your attorney,
contracts which Mr. Richman had entered [

mony of Roy E. Hallberg.)

has been testimony on it at least twice, once in Mr. Hallberg and once through Mr. Whyte.

Court: Sustained. I would like to have the other's explanation, though, of the delay in having the air pollution control work done.

Would you like to tell me in a few words what was about a delay and how come you got cited in court?

Witness: The contracts were returned by Mr. Whyte with the statement that it was perfect in order and to go ahead. I gave the—everything I had to Mr. Harrison and told him to mail them to the manufacturer of the smog control unit. At the time that—that, incidentally, was about the first of January. Two weeks later, when I received the warning notice, I asked Mr. Harrison about it and he brought out the blueprints out of his desk; they had not been mailed. At this time I told him to get them over there immediately, and I added also that that should have been done at the time I first directed him to mail them. It was a week and a half or two weeks' delay right there.

Court: Was anyone ever fined or was any civil penalty exacted from the trust because of this delay? [535]

Witness: No, sir.

(Testimony of Roy E. Hallberg.)

Mr. Whyte: Objected to. The document was filed with the court will speak for itself.

The Court: Objection sustained. I understand that the Receiver asks for a reasonable fee covering everything, and Mr. Whyte has broken down into ordinary and extraordinary.

Mr. Whyte: No further questions of Mr. Hallberg, unless the court has something more.

Mr. Enright: I have something more.

Recross Examination

Q. (By Mr. Enright): You made no entries in your diary, did you, concerning this January or approximately January 1st attention to the Oxyaire matter, did you, that you have just testified to?

A. Apparently not, although at the time I explained to you all entries were not made the way I didn't go into detail on every little matter.

Q. You did make an entry on January 1st, "Received notice re Oliver Cromwell incineration. Oxyaire vice president said he would handle with authorities. Urged him to get on our job. Drawings not received." [536]

Did you make that entry?

A. I did. That is when I found they hadn't sent it.

Q. You didn't transmit the drawings until January 22nd, as shown by Exhibit B?

nony of Roy E. Hallberg.)

hadn't been sent, and I dictated a letter and
them on the way.

You signed this letter that states, "This let-
confirm Mr. Harrison's telephone conversa-
th you on January 15th"? A. Yes.

Enright: I have no further questions.

Court: All right, Mr. Hallberg. [537]

* *

Angeles, Friday, June 18, 1954, 9:00 a.m.

Court: Good morning.

is a day we have 30 minutes' argument on
de. How do you want to divide it, 30 minutes
retch or have an opening and then a reply?

Whyte: I prefer to open and close.

Court: Proceed to open. We also have a
ial on here today, which will make it neces-
r us to keep ourselves to the hour, and we
tter take up that matter with Mr. Camusi
eday.

Whyte: Before I commence, your Honor,
ask for instructions with reference to two
hich have been contracted by the Receiver.
the sum of \$89.20 for one copy of the deposi-
f Roy Hallberg and John Whyte.

other in the sum of \$100.00 as the fee to be
o the expert witness. Mr. Mann, who an-

Mr. Whyte: You mean which depositions v
they?

The Court: Yes.

Mr. Whyte: They were depositions of Mr. E
berg and myself, which were taken by Mr. Enr
and we requested one copy. [541]

The Court: Well, you had better coast on y
credit for a little while, and I will give you
structions when this case is decided.

Mr. Whyte: Very well. I feel that the court
a very adequate picture of the testimony which
been presented at this hearing. I am not g
to take much time.

I simply want to point to three or four of
salient features of the testimony and some of
points which were stressed in the objection
by the defendant Richman.

Let me turn to page 7 of the Objections file
the defendant and refer there to the matters
which the Receiver was originally attempted t
surcharged. Those matters are three in num
that is to say, the principal ones are three
number.

First of all, that the Receiver failed and
glected to collect rents from the five apart
house managers for February 26, 27, and 28, 1
That sum was approximately \$1,200.00, I belie

Secondly, that the Receiver did not collect p
cash funds in the hands of the managers in
sum of \$785.00.

was due March 1, 1954, in the sum of \$2,-

and stress was laid upon those during the
of the testimony. Let me say right now that
it has been conceded [542] by the defendants
they are not attempting to surcharge Mr. Hall-
personally for those amounts, but that they
look to the funds in the bank account to make
whole, in the event that this court finds they
be made whole, as between themselves and
plaintiff Mrs. Tidwell.

View of that posture of the case, any derelic-
t duty on the part of Mr. Hallberg in this
connection would go simply to a diminution of his

even though he is not being surcharged personally, any-
thing that he may have done that was wrong in
connection can simply operate to reduce the
amount of the fee which the court will otherwise

take up each item individually and see
whether Mr. Hallberg did do anything wrong, was
diligent, was he ineffective in any manner.

Of all, as to the collection of the rents for
January 26, 27, and 28, the court will recall the
evidence of both Mrs. Hallberg and Mr. Hallberg
to the effect that Mr. Udall, the manager for Mrs.
Tidwell, stated on Sunday afternoon, February
1, that the managers were not to permit the

Secondly, let me turn to the deposition of Hallberg, at page 106, line 13: [543]

“Q. ‘The Western Arms and the Canterbury managers reported that they had so much outstanding they would prefer to make the collections on the week end. It is not good business to make collections when the banks are closed. The apartment houses had safes for safekeeping the receipts, whereas the Receiver’s office had none. The Receiver was advised by his attorney to act in that capacity the morning of March 1st, Monday, consequently the March 1st funds on hand could not be picked up. The Receiver’s report mentions this fact only in relation to the total receipts for February not being complete for comparative purposes.’

“Now, is that the reason, as stated here, why you did not pick up the moneys from the two apartments on March 1st?

“A. That’s right.”

In other words, both because the plaintiff’s attorney refused to allow the Hallbergs to pick up the money and so instructed the managers, and because there were no adequate facilities for keeping large amounts of money over the week end, money couldn’t be deposited in the bank. There was no safe at the Receiver’s office at the Oliver Cromwell.

Under those circumstances, I submit that the Receiver [544] has done nothing wrong with respect to his failure to pick up these rents. In

rm done. There is no damage done. Why the Receiver be penalized?

ndly, as to the petty cash fund, the terms order removing the Receiver from his active of management specified that he was to re-moneys in the bank and under his control. order was given to me to interpret. I advised Receiver that the money in the bank should be ed by him.

to the petty cash fund, I was of the opinion they constituted part of the operating assets e apartment houses. That the operation of apartment houses was to continue. That it s I interpreted the order, the intention of the s they desired the operation of the apartment should continue in a smooth fashion.

recall the testimony of Mrs. Kennedy, the er of the Western Arms Apartment House, what those petty cash funds were used for. id they were used for key refunds, little bills, ners for the can man who evidently picked e garbage, extra help, and employees from yment agencies, washing windows and walls. ubmit to your Honor that those funds were ary to the continuance of the operation of apartment houses. [545] That for that reason Receiver properly interpreted the order of the

pay his attorney fees and any other items which may arise.

Finally, as to the third item, that is to say, payment on the Oliver Cromwell trust deed, payment was made, and I believe the check dated on the 27th of *November*. At that time Receiver had full power to make that payment. His powers did not terminate until 5:00 o'clock p.m. on the 28th, Sunday.

Mr. Richman himself testified that during the time he was in control of the receivership he on several occasions made the payments, which were due on the 1st of the month, before the 1st of the month arrived. I submit that it was a perfectly prudent payment for the Receiver to make, that he should pay an obligation falling due on the 1st of March by a check dated on the 27th of February.

Again, what harm has been done? That was an obligation of this estate, that had to be paid by somebody. If it has inured improperly to the benefit of Mrs. Tidwell, that matter can be adjusted through the moneys in the bank account through the hearing which your Honor is about to hold, to adjust the rights of Tidwell and Richman. [546]

So I say as to each and every one of those items no harm has been done. Unless your Honor holds that the Receiver has acted negligently in any way, his fees should not be affected.

Let me say just a word about this small account

which was not contradicted in any way. He said that he furnished me with the files and contracts the day before Christmas 1953. That I exchanged those, sent them back to him and told him the contracts were binding, that he should go on to have the installation made.

The plans had been furnished to him by Mr. Harrison sometime during the latter part of December of 1953. On or about the 1st of January, or thereafter, he instructed Mr. Harrison to take those plans to the Air Pollution Control, Inc. Mr. Harrison did not do so. There was no denial of this testimony. Mr. Harrison did not appear to deny it.

On or about the 14th or 15th of the month a copy of notice was received from the Smog Control authorities. At that point, where Hallberg disclosed the plans had not been sent, he asked Mr. Harrison to send them. He asked Mr. Harrison to take them to the Smog Control authorities, or, rather he asked him to call the Oxyaire group.

Mr. Harrison talked with Mr. Manalis. Mr. Manalis was [547] to do something about it. Then a criminal citation was issued at the end of the month. The hearing was held and subsequently the citation was dismissed. No fine was ever levied on this estate, no damage was done to anybody by the expenditure of some time and effort in going in court and having the proceedings dis-

Pollution Control, Inc. He stated positively on cross examination that for ten days to two weeks prior to January 15th, and for three to four weeks thereafter his company was in short supply of metal which was necessary to this installation. In short, his company could not have made the installation during an extended period of over a month, from on or about January 1st, until the 1st of February.

Under those circumstances, if the Receiver failed to notify the Oxyaire people promptly, his negligence in that respect, if any, did not proximately cause the result, for the installation could not have been made in any event, because the Oxyaire people couldn't make it.

One further word about what was said about the Receiver's negligence in not visiting the apartment houses often enough, that he wasn't on the job, the court heard the testimony of Mrs. J. J.hardt, the manager of Fountain Manor. She testified that Mr. Hallberg was in her apartment building between seven and [548] twelve times.

Does that sound to the court as though the Receiver wasn't on the job?

Furthermore, the Receiver had a competent bookkeeper. He had his wife, who three times a week picked up these rents and deposited them in the bank. He had help, admittedly, which was competent and which did a good job for him, just as Mr. Richman had competent help when he was

properties, he testified he had many other he had other things in his office. He was from the office and in court on numerous ns in connection with the trial of this case. referred with his attorneys regarding strategy. he didn't devote a hundred per cent of his o the management of these properties.

mittedly, neither did Mr. Hallberg, but he did job, and the report he rendered shows it. ried on through himself and his agents com-y.

, as to the amount of his fees, again there contradicted testimony in the record by an witness, that it is customary and usual in ea for apartment house or for managers of properties of this nature to receive five per e gross rents. That, of course, is substantially what Mr. Richman received. [549]

ll attempt to draw no parallel with Mr. Rich- because the court has already decided that ichman's fee was excessive. But just a word ny own fees in the matter.

ve one case for the court which I might cite. ase is Missouri & K. I. Ry. Co. vs. Edson. It Eighth Circuit case. The opinion was written lge Sanborn, and it is reported in 224 Fed., 9. That case holds, and I will simply state uestion which was presented on the first page opinion:

fending himself against baseless charges of
feasance in the discharge of his duties as
Receiver, * * *

The court gave an affirmative answer to
question and an opinion of some three or
pages, and developed the matter rather care-

The court, I am sure, in its own discretion
fix an adequate fee for both the Receiver and
attorney. There is testimony in the record as to
value of the attorney's fees. Mr. Laugharn
fixed a thousand dollars a month should be paid
as to the advising of the Receiver during the
receivership.

Mr. Fussell, who appeared here later in the
mony, [550] was of the opinion that from \$1,000
to \$1,200.00 was proper insofar as the defense
the Receiver against the charges laid against
by the defendant were concerned.

I would like to reserve whatever time I have
to answer anything that may be said by Mr.
right.

Mr. Enright: May it please the court, after
reading of the report of the Receiver would
manner divulge that the \$2,000.00 paid upon
Oliver Cromwell, March installment, was a
obligation.

A fair reading of the report of the Receiver
result in the conclusion that there is a concealment
of the facts that \$785.00 petty cash is funds under
the control of the Receiver.

lect. He didn't recite that as being something was still belonging to the fund.

The only thing he said was there was \$2,000.00, 1,290.00.

Now, let us not for one moment think that we hastily filed our objections here. We filed them because there were those three specific items that were conferred upon and given to the plaintiff, and the Receiver improperly did it and had his attorney analyze it in any manner the order of February 26th he would have to have told the Receiver, "This is petty [551] cash that is under your control. Keep it."

That man wants to be paid \$60.00 an hour or \$33.00 an hour for that kind of advice. He wants \$3,000.00 ordinary fees.

Let's get this straight once and for all, so far as this is concerned I doubt sincerely whether an attorney, a pure ordinary attorney, rendering only legal services, is worth \$30.00 an hour. I don't know who he is. They are not worth it in the industry.

Break of basic industries, cement, packing, textile, garment, and oil, and all the other basic industries. They just don't pay that kind of money for legal services. They might pay it because some of them has some financial connection, or on some basis, for services, but for pure rendition of legal services they are not entitled to that amount

dinary services, \$1,000.00 a month, for going three days before the Receiver was qualified telling that Receiver to stop bank accounts and ing the Receiver to go to apartment houses and moneys before the Receiver had even qualified, if he expects to be paid \$30.00 an hour for t eleven hours, then I say that would be a comp abuse of discretion and a miscarriage of justice.

I once heard—I don't know the authority for but it is quite apropos—the law isn't yet that rabbits can decide how much cabbage will be for the owner. Mr. Whyte is no more than other rabbit. If he thinks he is going to eat up fund at the rate of \$1,000.00 a month, plus extraordinary services, I am sure your Honor won't along with that proposition.

We have not levied our objections to the ceiver's failure to collect the petty cash and collect those rents. We must first go through Receiver and have an order of this court that Receiver should have collected that money, because that was the order of this court, to collect money on February 26th. At 5:00 p.m. February 28th he was to continue to collect those rents.

Now, once the court orders that the Receiver should have, then our rights are protected. I am not interested in going through an endless course of litigation, so the objections were well taken and properly taken.

But your Honor that wasn't the most serious

...e I feel it my duty to a court to submit au-
...r for what I say or what I propose. And I
...his case of *Cake vs. Mohun*, 164 U.S. 311,
...e it is one of the earliest cases, and I like to
...e earliest and the latest Supreme Court or
...g [553] authority, so the court will know
...he law was at the beginning and at the end
...jurisprudence. There the court said:

...view of the fact that the receiver had never
...n the hotel business; that he employed a man-
...t \$125.00, and a part of the time at \$150.00 a
..., and required of him a bond for the faith-
...rformance of his duties; that he was not pre-
...from giving his usual attention to his busi-
...nd ordinarily spent only his evenings at the
...-we are bound to say that, if it had been
...ginal question, we should have fixed his com-
...ion at a considerably less amount."

...n the Supreme Court goes on to explain that
...ust be reasonable, to protect the Receiver's
...mpensation, and to protect the owner of the

Those words are apropos here.

...e we have a Receiver that paid \$1,800.00 dur-
...period of three months for Mr. Harrison and
...Findeisen. He had five managers, and he was
...sed to devote his time to the attention of
...properties. He only spent his week ends.

...re is only one reasonable deduction that can

business—so this Receiver spent some week en

Now, a more recent case is *In Re Pittsburg, N.R. Co.*, 75 Fed. Supp. 292. The court had this to as to what should be considered in fixing the fe

“The considerations that should be contro with the court in fixing compensation are the ture of the matters administered, the amount volved, the complications attending it, the am of bond required, the time spent, the labor skill needed or expended, the degree of success tained under all circumstances, the fidelity to tails, the appreciation evidenced as to the respo bilities of the position, the character of said res sibilities, the expedition with which the trust been administered, in view of results reached, the method, character, and promptness of the counting, having regard, as a standard, to wha paid for somewhat similar services in the perfe ance of official duties. * * * The value of the s ices rendered should not be considered gener but only with reference to the trust administered

Now, let's apply that statement of the cour what occurred here. Mr. Hallberg was empl by the County of Orange at \$355.00 a month. didn't disclose it to anybody, not even his atto or this court.

He was supposed to spend 40 hours a workv there, and I am sure he did, beginning a new

His wife, Miss Catherine, was a

g? He wasn't available when the gas broke Western Arms refrigeration.

ve considerable difficulty, your Honor, in ling Mr. Hallberg's conduct in this matter, submit it is to be taken into consideration g compensation. His time spent was nominal. another authority that is very clear, and it, quite recent, is *In Re Insull Utility Invest-* 6 Fed. Supp. 653, at 661, affirmed in 74 2d) 510.

report spoke of the receiver's prior experi- ad knowledge in these words:

other matter—Does the performance of the rship call for special knowledge and spe- aining? If so, does the receiver who is ap- l qualify? A single illustration will suffice. ident of a railroad has reached his position 0 years of service. He has devoted his en- 56] life and all his time to transportation ss. His road goes into receivership, and he ed receiver. He continues to devote his entire and his experience is as valuable as a re- as it was as president of the railroad. Under reumstances, the court must of course con- the compensation which the appointee re- as president of the railroad. The same ap- o the receiver of any other utility. If the ap- be an engineer or an operator, whose years

confidence of the court, is not equally qualified to render the service for which the technical experience of the engineer qualifies him."

Now, let's see what happened in this matter. Hallberg represented to this court that he had a great deal of experience.

"Mr. Hallberg was for some years associated with a property management operation in Chicago. He has considerable acquaintance and experience in that type of work. Since coming to California, he has held various positions with different [557] of corporations, and has been engaged in the management of property for elderly relatives. He has considerable apartment property in Southern California.

"I called him and found that he is available. I asked him to come in here at about 2:00 o'clock today, so that counsel could meet him."

Now, he continued on a few minutes later and reaffirmed those representations. The facts are, Your Honor, by his own admission—and there is no conflict in the evidence—in 1931 he was involved as an employee of a bondholder of a defunct bank in Chicago.

In 1947 he landed here in California, according to his own admission, and he bought two homes. One house at 85 and the other across the street, and then he invested \$18,000.00 in the Morgan Construction Tooth and drew a hundred dollars a few months ago, and then he went down

e went to work over at the County of Orange.
, remember, your Honor, he represented to
d to your Honor he had the time available
e on this receivership. Three days, after
g that representation in the chambers of this
he took a full-time job down at [558] the
y of Orange.

r, your Honor, I know the man testified that
out four years he made \$40,000.00 a year in
arketing of wine in New York, or vineyards,
t was before 1947. I don't know what the
of his services were. I know this, that in
arding of this court's decision he didn't have
ualifications to be a manager of apartment
property in this area. His little diary of data,
hed to him by Miss Cosgrove, evidences very
r that he knew very little about apartment
management.

r, under those circumstances, I submit that
an is in this court with very, very unclean
to say the least. I know your Honor sought
ut to be appointed, but, on the other hand,
that he should have at least made a full and
ete disclosure to your Honor before you con-
n him and appointed him.

drew \$355.00 a month for his services in the
y of Orange. He came up here on a few
ends. He sent his wife up here to pick up
cents and deposit them in the bank and that

rate of compensation paid in private industry don't know whether I agree with it or not, but in any event, the appellate courts have laid down the rule that public officials are not [559] compensated at the same rate as private individuals in private industry. Their rates are lower. That is especially true, I think, in the federal judiciary. Whether it should be that way or not, nevertheless it is a fact.

This man had no risk of any kind or nature on his part. As a matter of fact, Mr. Whyte's deposition and the testimony entered in this record shows that your Honor interceded to a degree in obtaining the man's bond for him when he was qualifying, especially qualifying.

Now, they put on an expert witness here at five per cent for a property manager who furnishes everything, who furnishes the Harrison's, the deisens, who furnishes the office, who furnishes the telephone, who furnishes all the facilities. It is five per cent according to their own expert and the Realty Board at Los Angeles. It is five per cent for collections under \$2,000.00 and it is three per cent for collections over \$2,000.00.

The rents here were far in excess of \$2,000 a month. Assuming he had had the qualifications to be a property manager, none of which he had because his only experience in apartment house property, except this incident back in '31 in Chicago, was that he and his wife, Miss Cosgrove, owned a 14-unit apartment house in 1940.

ce with one apartment [560] over there. Does
qualify one any more than this trial has qual-
ne to be a property manager, and I think I
earned quite a bit during the course of this
nd hearing concerning apartment house man-

y, the time the receiver devotes to the ad-
ration was commented on in the Insull case.

the court said another important factor in
mpensation of the receiver is the time de-
to the work and the character of the work
med.

s man devoted very little time. He was here
he qualified, the first two or three days after
pointment. Then he went to work on a Wed-
y down at the County of Orange.

was here the day before he appeared before
ourt in support of a petition for authority
ovate and remodel the apartments. He ap-
d for his fees hearing.

y, under these circumstances, that is, first,
iver who undertook to devote his entire time
t is the only reasonable deduction that can be
from this record at the time of his appoint-
-who devotes only week ends, at most, and an
onal weekday, who represents that he had
ications, long years of experience, what com-
tion is to be paid him is the question. And so

He has been paid \$355.00 each month by County of Orange. I suppose they should be allowed their expense money or allowed something, but integrity and no concealment is the first basis of executive employment. You must have integrity first, before you are ever employed. And I submit that it should be considered in fixing his fees.

So far as the attorney's fees are concerned, this was a true base claim, not a basis claim, of objection to this accounting, and I can't see the wisdom nor the justice nor the reasonableness of any law of law that will permit a man to come into court and say, "I want \$3,000.00 for my services and if you don't pay them to me you will pay me another thousand dollars, if you object to my \$3,000.00 and that is the net effect of their argument.

They want now \$3,000.00 for ordinary fees. They want extraordinary fees on that smog matter, well I won't further discuss. The record is in black and white.

Then on top of that, they want another thousand dollars for attorney's fees because we objected to paying \$3,000.00 plus extraordinary.

Thank you, your Honor.

The Court: Now, Mr. Camusi, we didn't finish our jury trial yesterday, so I will have that jury back here to finish it this morning. [562]

Can you go forward with the pretrial matters in the Tidwell vs. Richman phase of this case?

if I could be excused at 11:00. I have a mat-
just can't put over.

Court: We will continue that phase of this
g until Monday afternoon.

Camusi: Your Honor, I am sorry again, but
e starting a will contest case in Orange County
ay. These last three months have been just
t of proportion to what a man can do. I don't
what to say.

Court: How long do you think the will con-
s going to take?

Camusi: We have estimated it won't exceed
ial days, and it is a good chance it will be
erably less.

Court: What about your time, Mr. Enright?

Enright: Well, I am always available at the
nience of the court. There are three or more
ers in the firm of Mr. Camusi. They have par-
ted in this proceeding throughout, and I am
sure one of them can be here. It has always
ny experience, in appearing in this court and
her federal divisions of this court, my calen-
must be convenienced to it.

eel this matter is one well briefed already.
is very little left, if anything, to be consid-
on the pretrial. [563]

ey have submitted their memorandum, and
I think we can stipulate to a few facts, and

about ready to send the secretaries up to try some of the cases. We have five men in the office and have just been terribly busy. I don't know what has happened, but the last two months we have been unable to cope with all the case load we have.

It is one of those unfortunate things, where we haven't been able to put over hardly anything.

The Court: Who is going to try the will test?

Mr. Camusi: There again we have a very young man in the office who has done all the work of the office and I am coming in the last minute to sit and hold his hand.

The Court: You can start holding it Tuesday morning. We will continue the pretrial on this until Monday at 2:00.

Mr. Camusi: Your Honor, we are defending a half-million dollar estate, and this boy has been practicing for a year.

The Court: It is going to be the first day of trial and it is his responsibility, and you are going to hold his hand.

We will require someone of your side of the bar to be here [564] at 2:00 o'clock on Monday.

All right, Mr. Whyte.

Mr. Camusi: Am I excused then, your Honor?

The Court: Yes.

Mr. Whyte: I am certain that the court recognized that Mr. Enright's statement was replete with facts and figures.

which he represented here, he stated, for example, that the Receiver came in only on week days. That was denied by the Receiver many times, and that question was put to him by Mr. Enright.

Hallberg testified positively he came in on week days during the week, and even worked nights. He stated that two or three days before the Receiver was qualified I went out, I think he said on four days I went out with him and induced him to pick up moneys from the apartment-house managers, and in that connection spent many hours, I note from my time slip, for that day which was the day before the Receiver was qualified, which was on December 1st—the Receiver was qualified on the 2nd—and I spent about four hours going around with the Receiver and over to the Union Bank.

He spoke about the Receiver's lack of experience. The only experience he had had was running apartment properties back [565] in Chicago. Of course, he completely left out of consideration the fact that the Receiver had a 16-unit house down here in Pasadena, and another four-unit apartment house in Pasadena. The Receiver and his wife got in and did the actual physical work at those properties, they painted, renovated, carpeted.

I think this court was extremely fortunate to have obtained a man of Mr. Hallberg's background

lish? That is the testimony. Did he run this in a negligent, poor fashion?

Now, let's see how his stewardship compared Mr. Richman's.

When Mr. Hallberg went in there, there were apartments which hadn't been painted for years. He came into this court and petitioned for authority to renovate. That order was granted. He and his wife saw to the decorating of these apartments and the repainting of them. Mr. Richman didn't do anything like that.

So far as I know, he didn't come into this with petitions for authority to renovate and to set the standard of these apartments.

The Court: Wasn't it a judicially administered trust?

Mr. Whyte: In any event, Mr. Hallberg was given the job [566] sufficiently to see, in order to keep the vacancy factor in these apartments and get the maximum for them, that you had to improve the apartments, and he did it.

Secondly, the vacancies were reduced out of the Western Arms Apartment, alone during the month that Mr. Hallberg took over, from eight to three. Does that look like a poor job of managing apartment buildings?

Finally, Mr. Richman testified that the rent was a comparable period, under his stewardship, I believe, \$2,300.00 more from December 1,

within some two thousand dollars of what Schmann took in during a comparable period? What the basic economic conditions governing apartment houses might have been during these periods.

In other words, the fact that the Receiver may have been on the job full time, which we admit, is the important or controlling factor here. He is the responsible agents who were on the job. The fact which he accomplished testify to the facts that his administration was a successful one.

As to the nature of his fees, I am sure this court will not overlook the fact this Receiver was dealing with an estate valued at a million two hundred thousand dollars. The Receiver was obligated on a \$100,000 bond. When a man undertakes [567] litigation of that sort, surely, the responsibility he assumes is worth something, insofar as compensation which should be awarded him is concerned.

Don't dignify some of Mr. Enright's remarks with reference to my fees. He seems to think that an hour is entirely out of line, despite the testimony of the expert witnesses. I recall Mr. J. H. Morrow, one of the deans of the Bar, testifying in Judge Hall's court, and other attorneys Melveny & Myers, in connection with the Federal Home Loan Bank litigation. They said the fee per hour of Mr. Works and Mr. Fussell

I am not going to make any excuse for asking that figure, in view of the size of the estate and the matter involved.

This Receiver hasn't misrepresented anything to the court. When he came in here at the time of his appointment he knew nothing about the Co of Orange job. He took the job. It wasn't a time job. He had to spend eight hours a day. Most of it was taken up with preparation of reports, which he could do at home, which he frequently did at home.

He contacted clients in the evening after hours, so far as appraisals were concerned. This left him with time, [568] not only to supervise the activities of the Receiver, but to consult with Hallberg every evening as to the results of the work.

I don't think it is necessary to say any more. I said at the beginning, the court has an adequate complete picture of the testimony given here. The Receiver and his attorney have supervised the properties worth a great deal of money. They have a complete report, and I am going to leave it entirely to the court, to your Honor's discretion, what you believe to be a reasonable fee for both of those gentlemen.

Thank you.

Mr. Enright: There may be some uncertainty in the record concerning the deposition of R.

portions, if any, I desired to move to strike.
waive that motion to strike.

Secondly, I am not certain as to whether or not
deposition of Mr. John Whyte is part of the
evidence. I would like to have it received in evidence,
as Mr. Hallberg's.

Court: So ordered.

Enright: Thank you, your Honor.

Court: I suppose we best consider this mat-
ter submitted until after we have completed the
evidence. [569]

Enright: That is my understanding, and I
think it most advisable.

Court: There has grown up a habit in this
court—I am not speaking of this case—but attor-
neys have taken to writing letters arguing and re-
questing their cases. The Rules say that shouldn't
be done.

I will be glad to receive any memoranda filed
with the clerk in the ordinary course. There hasn't
been any order in this matter. You haven't asked
for permission to file.

Do you want any such permission or have I heard
enough?

Enright: I am willing to submit the mat-
ter, the points and authorities and memorandums
previously submitted.

Los Angeles, Monday, June 21, 1954, 2:05 p.

The Court: Shall we come on the record?

I suppose the most practical thing is to see if we can arrive at an understanding as to just what the issues are between Mrs. Tidwell and Mr. Richmond and how far those issues can be determined upon the record which has now been made, and in what areas we will need to take further testimony.

What is your view of it?

Mr. Powsner: I think you proposed a certain number of stipulations in your Memorandum, Enright.

Mr. Enright: Yes. Your Honor, I believe I stated the differences in my Memorandum, that the differences between the plaintiff and the defendant.

I further proposed that those differences could be settled upon the present record, although I did not refer to the present record in my Memorandum, but by the addition of orders already made by the court in this proceeding and a part of the record, including the escrow instructions executed by both parties, the mutual release executed by both parties, and I would like to add, which I did not refer to in my Memorandum, the Smog Control contract which has been frequently referred to, but I think we are all agreed to so far as the parties are concerned.

That would leave the record in this status: the [5572] court to decide the \$785.00 netty.

y two thousand dollars, and the services of Richman for the month of November 1953, the before the Receiver took over.

y, I was pleased to observe that upon examination of plaintiff's Memorandum that on page 8 of Memorandum, I think it is line 13, to identify accurately, concerning the Oliver Cromwell two thousand-dollar payment, plaintiff stated:

Defendant Richman claims that the Receiver in the March, 1954, mortgage payment on the Oliver Cromwell trust deed in the sum of \$2,027.25. That be true that payment should have been made by Plaintiff Tidwell from her own funds and that Defendant Richman would be entitled to a credit for one-half that amount."

It is exactly our position on it, so I think it is more or less in a stipulated form, if they agree to——

Powsner: I think the situation——

Richman: May I finish?

Powsner: We have that particular check, which is No. 433. In the check, if it so states, that it is for the March 1st payment, I will stipulate to state that.

As to the conclusion of whether or not it was the March [573] payment, which is considered, according to the agreement, to be an obligation of Mrs. Tidwell, I can't stipulate as to that. There may be

but I am unwilling to stipulate completely Mrs. Tidwell should reimburse the Receiver. I am willing to stipulate that the check has on it the information it has on it, whatever it is.

The Court: And that information truly reflects the purpose of the payment?

Mr. Powsner: Yes, subject to—well, that the information contained thereon is true.

Mr. Enright: I will accept that stipulation.

The Court: You seem to be in agreement on the issues, as Mr. Enright stated them.

Mr. Powsner: I think Mr. Enright has stated correctly the demands he is making upon Mrs. Tidwell. I think he hasn't stated the counterdemand. Mrs. Tidwell's demand against Mr. Richman could read the list. There are taxes——

The Court: Well, the purpose in going over this openly is that it invites an immediate answer to the part that is immediately stated, and thus we can break down the burden that is ahead of us at trial, a little better than [574] by simply taking the attitude that it is all in our respective memoranda.

Mr. Powsner: I understand. In other words apparently Mr. Enright mentioned four items, and Mr. Enright claims either against Mrs. Tidwell or against the fund.

I agree those four issues are involved, and I think those are the only four demands made by Richman.

are the real property taxes on the apartment which Mrs. Tidwell paid out of her per-
funds for the first six months of 1954. It is
intention that there should be a proration
so that the first two months' worth of those
should be reimbursed to her out of the Re-
s funds. That the first third would be
77.

a, secondly, there are utility bills for a por-
the month of February, which Mrs. Tidwell
personally, in the amount of \$1,877.50. And
it is our contention that these should have
aid by the Receiver and, therefore, Mrs. Tid-
ould be reimbursed out of the funds in the
of the Receiver for this amount, before any
n of that fund is made.

dly, Mrs. Tidwell paid out of her own funds
30 for the Oxyaire units. It was our conten-
at this was an obligation of the trust during
ceivership and should [575] have been paid
Receiver.

n we contend Mrs. Tidwell should be reim-
out of the Receiver's funds for this amount.
thly, we claim there was \$4,499.29 collected
Receiver in February, which amount repre-
March rents. These went into the fund, and
im, since they were March rents, Mrs. Tid-
as entitled to them as a whole, and she should

tend these should have been paid personally by Richman, and we don't feel these should be out of the receivership, but paid directly by Richman out of his personal share after div of the Receiver's funds.

That is five items. I think that is—no, I think that completely states our claim. I think is a claim for \$158.00 as to compensation, or fund of premium on Workmen's Compens Policy.

I know Mr. Camusi, in his most recent memorandum, didn't include it. However, he included it in prior memorandum, and I don't want to state he is dropping it.

The Court: Do you want us to understand one of the questions before the court?

Mr. Powsner: That is correct. [576]

The Court: What is your view as to evidence to establish these claims? Can I get it from the record as it has been developed, or will it be necessary to supplement it by the addition of some documentary or oral evidence?

Mr. Powsner: What is your position on Mr. Enright?

The Court: Mr. Enright has told us he wants us to consider the Oxyaire agreement, the escrow instructions, the release, and I think a check on

Mr. Powsner: I think the other evidence and other additions to the record should be considered

Tidwell paid for the taxes, we don't have to
see evidence she did so, and so on and so
And as to the utility bills, also.

Court: What about that, Mr. Enright?

Enright: So stipulated. He mentioned the
only.

Powsner: That is right.

Court: Someone has been ordering tran-
script of all the proceedings that have been going
I assume that is a continuing order, or I would
be taking some notes.

Are you going to have transcript of this? [577]

Powsner: Yes, we will order transcript.

Enright: We have ordered transcript.

Court: I don't know who has. But I slipped
my habit of knowing it has been coming
up, relying on a continuance of that.

Powsner: I think that is reasonable. We will
order another transcript. We have discussed the
matter on the taxes.

Enright: May I comment? You left one
out. You are making claim for an escrow fee
\$9.00?

Powsner: That is right. That was left out
of the most recent memorandum, but appears in
the memorandum.

Enright: It is in the most recent, too.

Powsner: It is in issue, too.

Court: Are you agreeing that was the es-

I will stipulate to that. You did pay it.

Mr. Powsner: I don't know it was one-half the escrow costs.

Mr. Enright: Then I will stipulate you that amount.

Mr. Powsner: Will you stipulate we paid \$577.50 for Internal Revenue stamps?

Mr. Enright: Yes, so stipulate.

Mr. Powsner: And will you stipulate Mrs. well paid [578] out of her personal funds charges for utilities for the five apartment houses for months of February in the amount of \$1,877.50?

Mr. Enright: The amount, I am sure, is less than that amount. And if we can stipulate on all remaining, for the record, I may be willing to stipulate on that one, also.

The Court: If you are not, it is the sort of matter that is susceptible of such easy proof that we can both probably check your figures.

Mr. Powsner: I think you have five packets of utility bills.

Mr. Enright: I will be willing to submit those five packets, if that is your proof.

Mr. Powsner: I haven't looked at the packets.

Mr. Enright: There they are (indicating). Camusi handed it to me.

Mr. Powsner: That is correct.

Mr. Enright: If that is your proof, I will stipulate they can go into evidence.

Mr. Powsner: I will stipulate they go into

shown payment in excess of \$1,877.50, and the would represent March payment, but there ,877.50 relating to February utility payments. ever, I find myself in the somewhat awkward on that I haven't examined personally many items of debt here. Since I haven't exam- those utility bills, we are not willing to rely se solely for our proof as to this matter.

I am willing to stipulate they go into evi- for whatever weight they have, and if we e necessary that we be allowed to introduce evidence on that subject.

Enright: I will stipulate they go into evi- that is, the memorandum and the bills you here.

Powsner: I am speaking of the utility bills.

Enright: The five utility bills for the five ment houses.

Powsner: That is right.

Court: Does that stipulation include the sition that Mrs. Tidwell paid those bills out personal funds?

Enright: Yes.

Powsner: Then there is the payment made rs. Tidwell to the Smog Control people for xyaire unit, \$2,658.80.

Enright: Well, I am informed the Contract a lesser amount. I have seen no evidence for easter amount

Mr. Enright: Yes.

Mr. Powsner: Can we stipulate it be \$2,600 and we can close this matter, I think, quite quickly?

Mr. Enright: That is the amount called for in the Contract.

Mr. Powsner: Well, we will stipulate it is \$2,600 and we can argue about the \$58.00. It should be a small argument.

Mr. Enright: O.K. Now, the amount of revenue stamps, I think, is the only remaining one.

Mr. Powsner: I think we stipulated to that.

Mr. Enright: O.K.

Mr. Powsner: No, there are rents for March 1954. We claim that Mr. Hallberg collected in February rents of \$4,499.29, which are March rents.

The Court: Do you have a tabulation of the rents?

Mr. Powsner: I do not have, your Honor, I haven't seen any in the file so far.

The Court: Is that going to be an issue we have to take evidence on?

Mr. Powsner: That is what I am going to determine now. They may have definite information to the contrary.

Mr. Enright: Well, I am quite sure we can agree upon the amount of February rents, but before we do——

Mr. Powsner: I think March rents we are referring to.

Mr. Enright: I am quite sure we can agree

to see the managers' month-end reports for month of February. As soon as we can spend, an hour on those five reports for the five apartments, I am sure we can agree or else submit you——

Powsner: What you consider to be the cor-
mount?

Enright: Yes. It is something that is easy
certainment, if you can furnish to us the
ly reports of each of the managers for the
of February, which reflects the rents that
collected in February.

next question is what portion of that rent
for the month of February and for the month
arch.

Powsner: I will agree to furnish you with
statements. However, I won't agree to be
by what the books contain. In other words,
ps, as I said, I have no definite information
how this sum was reached, and perhaps the
would show a lesser sum. And it would be
osition that certain amounts were erroneously
d February rents, but actually March rents,
we would want to prove those by some inde-
nt means. I am not sure about that. It would
to be left open.

ever, of course, we will submit it to you and
the books will reveal the sum I have men-

we could [582] submit the whole matter to court.

Mr. Powsner: I think so. Yes, I will stipulate assuming that you agree the amount is as I stated.

The Court: You can get together on that agreement at your individual conveniences then.

Mr. Powsner: Yes.

The Court: And bring in a stipulation. It probably will be easier and save your time if we do not have to have a further extension of this pretrial conference.

Is there any element about which we will have to take oral evidence?

Mr. Enright: None, in my opinion.

The Court: There is the \$58.80.

Mr. Powsner: The possibility is that there may be some oral evidence required on these rent items. We have just been discussing, the rents collected in February, and claimed as March rents.

The Court: That assumes a lack of success.

Mr. Powsner: That is right.

The Court: If you get together on the \$58.80 and you probably can take your individual files and sit down in conference and you can work out the \$58.80 item and also the rent item.

Assuming you do get together on that, and agree on a stipulation, do you want to file further memoranda, or have [583] you written enough?

Mr. Enright: I believe I have written enough.

ing the filing of further memorandum, in lieu of argument?

Court: Yes. Or do you want to argue orally? Whatever you like. You know the problem and know your individual temperaments and how you can best work it out.

Enright: I would suggest that we be directed to stipulate or not stipulate, say, within a reasonable period of time, five days, or something like that, and then if the court could find time to convene us for 15 or 20 minutes, that each come and orally discuss and argue the exact points involved. We might be able to aid the court in getting to the core of the problem. That would be my thought on it.

Court: Well, suppose we say that you either arrive at a stipulation or series of stipulations, or make the effort prior to the last day of June, that if you do arrive at a stipulation, that we set the matter for oral argument on July 6th at 10 o'clock.

Powsner: Your Honor, I wonder if it would be at all possible to defer oral argument in this case beyond the month of July. Mr. Camusi has been out of the State during that month. I think he wants to argue the matter. [584]

Court: My giving you that date was not a matter of convenience, but I had in mind that

If you want to put it over beyond the July date, it will have to go into a September date.

Mr. Enright: I would prefer to waive oral argument and submit some kind of a, say, not exceeding four-page explanation to the court before July.

My reason for asking that it be handled in this manner is this: I believe it desirable that the Receiver's fees in this matter all be submitted at the same time.

The Court: I think it is to everyone's advantage to get this tag end of the litigation straightened out and over.

Mr. Powsner: It isn't my desire to hold up payment of the Receiver's fee. I don't see that the ascertainment of the reasonableness of his fee and his attorney's fees is dependent on the resolution of the issues between the plaintiff and defendant.

The Court: They rather fall naturally on the same table for consideration. And I would like to have one more bout with Tidwell vs. Richman, and then sign it off.

Mr. Powsner: I understand what you mean.

Mr. Enright: That is my feeling, too, Your Honor. It is difficult to work up these matters, analyze them and go in [585] and discuss them every time you do there is energy involved. That is why I want to do it all at once.

The Court: Particularly if it is one of those problems that stimulates the recollection of matters that should be considered on others.

a short informal memoranda on July 6th, I be happy to accept that in lieu of oral argument if you are going to do that, let me know of time so I can know whether to be here at 1 o'clock on the 6th.

Powsner: Mr. Richman and I, or somebody, get together and come to an agreement as to how the matter is to be conducted, by memorandum or argument, on the 6th, and will inform the court of the conclusions we come to.

Enright: We will meet between now and the 6th and agree to what we can stipulate to and what we cannot.

Court: Let's have these documents received in evidence now, so the clerk may mark them and then commence to have them.

Enright: May I read them off?

Court: Yes, read them off and hand the documents to Mr. Whyte.

Enright: First, a mutual release. This office has an undated, but it is the form used by the court, and [586] I think it is agreeable that it be

Clerk: Defendants' A.

Court: That is admitted.

DEFENDANTS' EXHIBIT A

MUTUAL RELEASE

Lyda Tidwell, individually and as co-trustee as beneficiary under Richman Trust, hereby releases each of the following named persons or corporations, their agents and servants of any and all claims, known or unknown, that she may have against any one or all of them, from the beginning of the world to the present time, and each of the following named persons and corporations releases all of them, their agents and servants, individually and jointly, release any and all claims, known or unknown, that they or any one of them have against Lyda Tidwell, from the beginning of the world to the present time, said persons being:

Frederick I. Richman, individually and as trustee and as beneficiary and as agent under Richman Trust;

J. B. Witt;

Witt Ice and Gas Co., a California corporation;
Modern Machine Works, a California corporation;

Consolidated Mortgage Co., a California corporation;

Formula Products Co., a California corporation;
Elizabeth Johnson, formerly Elizabeth Porter

Dated this.....day of March, 1954.

.....

.....

J. B. Witt

Witt Ice and Gas Co., a California
corporation,

By

Modern Machine Works, a California
corporation,

By

Consolidated Mortgage Co., a Califor-
nia corporation,

By

Formula Products Co., a California
corporation,

By

.....

Elizabeth Johnson, formerly

Elizabeth Pomy

—————

Court: That is for the court to consider as
e copy of the lease that was potentially ex-
?

Enright: Yes. The second exhibit, Exhibit
e mutual dismissal, dated March 25, 1954,
is a part of the court record. May it be re-
, the original, by reference?

Court: Yes.

(The document referred to was marked De-
endants' Exhibit B and was received in evi-
ence)

Mr. Enright: Exhibit C, a Stipulation between the parties, dated February 26, 1954, which is a part of the court record.

The Court: It will be received by reference.

(The document referred to was marked as Defendants' Exhibit C and was received in evidence.)

[Printer's Note: Defendants' Exhibit C is a document entitled "Stipulation" dated February 26, 1954, and is set out at pages 54-55.]

Mr. Enright: Exhibit D, the Order made by the court, pursuant to that stipulation, which was dated February 26, 1954, and is a part of the court record.

The Court: That is received by reference.

(The document referred to was marked as Defendants' Exhibit D and was received in evidence.) [587]

[Printer's Note: Defendants' Exhibit D is a document entitled "Order" dated February 26, 1954, and is set out at pages 55-57 of this record.]

Mr. Enright: Exhibit E, the escrow instructions, executed by both parties.

Mr. Powsner: It is a buyer's and seller's escrow.

Mr. Enright: Yes.

The Court: Received.

(The document referred to was marked as Defendants' Exhibit E and was received in evidence.)

(Page One)

ESCROW NO. 100-3456

ESCROW INSTRUCTIONS

February 26

1954

BUYER

NIA BANK HEAD OFFICE LOS ANGELES, CALIFORNIA

top of the time specified in this paragraph I will hand you having paid \$100,000.00 to F. I.

de of escrow and with which \$100,000.00 concerned).

and you a Dismissal with Prejudice and n of Judgment in that certain United ct Court Case No. 13742T, Southern Dis- l Division entitled "Tidwall vs.

MEMO	
Paid outside of Escrow \$	100,000.00
Cash through Escrow	500,000.00
Unpaid Balance of Encumbrances of Record	
New Encumbrances	
Total Consideration	600,000.00

and you any instruments and/or documents necessary and/or required of me to termin- ain Declaration of Trust known as "Richman Trust" dated November 1, 1945 and will co-trustee, F. I. Richman in the execution of any instruments and/or documents complete this escrow. I WILL ALSO HAND YOU

ds and documents, including notes secured by encumbrances I create required from me to enable you to comply with these instr- are authorized to use and/or deliver provided on or before May 1, 1954 inst- s ord entitling you to procure Title Insurance and Trust Company's Standard Owner's Form of Title Insurance e in the issuing Title Company's usual form with its liability for \$100,000.00

in the COUNTY OF LOS ANGELES STATE OF CALIFORNIA Viz as per attached rider

EL 1; The easterly 149.75 feet of the northerly 60 feet ot 1 in Block 2 of Beaudry Tract, in the city of Los Angeles, ty of Los Angeles, state of California, as per map recorded in 1 Pages 401 and 402 of Miscellaneous Records, in the office he county recorder of said county.

EL 2; Lot 17 of Culver's Hollywood Park Tract, in the city of angeles, county of Los Angeles, state of California, as per recorded in Book 4 Page 33 of Maps, in the office of the ty recorder of said county.

EL 2a: Lot 1 of the Holly Tract, in the city of Los Angeles, ty of Los Angeles, state of California, as per map recorded ook 3 Page 29 of Maps, in the office of the county recorder aid county.

EL 3: The north 21 feet of lot 8, and all of lots 9 and 10 and south 174 feet of lot 11 in block 14 of Chapman Park Tract, he city of Los Angeles, county of Los Angeles, state of ornia, as per map recorded in book 8 page 54 of Maps, in the ce of the county recorder of said county.

EL 4: Lots 22 and 23 of Country Club Heights, in the city of Angeles, county of Los Angeles, state of California, as per map rded in book 6 pare 56 of Maps, in the office of the county rder of said county.

EL 5: Lot 7 and the northerly 50 feet of lot 6 in block 1 ollywood Ocean View Tract, in the city of Los Angeles, county os Angeles, state of California, as per map recorded in book 1 62 of Maps. in the office of the county recorder of said county.

Defendants' Exhibit E (Continued)

Book _____ Page _____ of _____ records of said county.
TESTED IN: LYDA RICHMAN TIDWELL, a married woman as her sole and separate property

ANCES EXCEPT:
ment General and Special Taxes for the fiscal year 19 53, 19 54, including PERSONAL PROPERTY TAXES
owner AND ALSO INCLUDING ANY SPECIAL DISTRICT LEVIES, PAYMENT OF WHICH ARE INCLUDED THEREIN AND
WITH:

nts levied or assessed subsequent to date of these instructions;
reservations, covenants, easements, rights and rights of way, of record, if any,

Mattel Mortgage
indebtedness of \$ 265,000.00 as per its terms, now of record the terms of which indebtedness and said trust
d hereby approve, no further approval necessary (see page two for amount of unpaid balance of principal) affecting
my Trust Deed which I have executed individually in favor of California Bank
covering any and/or all of the above described
property.

me Bill of Sale executed by F. I. Richman and Lyda Tidwell, formerly known as
trustees under Declaration of Trust known as "Richman Trust, dated November 1, 1945
in Tidwell, a married woman as her sole and separate property and covering all
furnishings of the apartment buildings located on the above described properties.
thereon as one of the trustees constitutes my approval as Vendee of said Bill of

me an instrument or instruments of transfer to me covering all other and remain-
said Trust, the same to be approved by my attorney, Laurence B. Martin.
and to you for delivery to F. I. Richman at close of escrow a full and complete and
be in favor of F. I. Richman and all other parties named as Defendants in the above
and States District Court Action when you can hold for me a full and complete release
executed by said Defendants. The form of these mutual releases is to be approved
by Laurence B. Martin and by Joseph T. Enright, attorney for F. I. Richman.
ing the printed provision in these instructions I agree to pay, in addition to the
and expenses in this escrow all of the caller's costs and expenses of this escrow.
of the policy of title insurance, revenue stamps and recording and filing all
nd documents and the seller's escrow fee.
ions are not intended to and do not amend, alter, modify or supersede any
side of escrow between F. I. Richman and me and with which agreement California
to be concerned.

you a Quitclaim Deed from my husband Albert Ray Tidwell covering the above described
ating sole and separate property in me.

LE INSURANCE CALLED FOR UNDER THESE INSTRUCTIONS MAY BE ISSUED FOR THE BENEFIT OF ALL PARTIES IN
BE PROCURED FROM ANY TITLE COMPANY OPERATING IN THE COUNTY WHERE THE PROPERTY IS LOCATED AND
TO EXCEPTIONS AND CONDITIONS CONTAINED IN SUCH COMPANY'S REGULAR PRINTED FORM INCLUDING, BUT NOT

ADJUSTMENTS ONLY ARE REQUIRED IN THIS ESCROW:

Trust Deed is now of record, and the statement by the owner of the note secured thereby or the holder for _____ in showing thereon to be \$ _____, and adjust interest thereon on basis of such statements to _____ None

OF PRINCIPAL THEREON SHOULD SHOW TO BE MORE OR LESS THAN SET OUT ABOVE ADJUST THE DIFFERENCE CASH THROUGH THIS ESCROW.

and credit the seller the amount of any funds shown on beneficiary's statement as impounded for future payment of the _____ mortgage insurance premiums, and prorate mortgage insurance premiums paid F.H.A. during the past 12 months based on said _____

w encumbrances by endorsements on notes to _____ None

ing all items appearing on tax bill except taxes on personal property not conveyed through this escrow, to _____ None

_____ based on latest tax statement in your possession _____ None

als of statement approved by me, to _____, but make no adjustment on uncollected rentals

insurance policies as are submitted on buildings situated either on property above described or on premises known as _____

_____ and prorate premiums thereon from _____ none (transferred free)

_____ and that the policies have not been hypothecated

adjustments and/or proratings on the basis of a 30 day month "Close of Escrow" is the day instruments are recorded or registered

pay on demand all prorate adjustments chargeable to me; charges for recording deed; for notary fees on documents executed by me

on insurance; for drawing mortgage and/or trust deed; cost of drawing and recording any other documents necessary on my part to

Title Company's charge, if any, for showing title vested in me, and Buyer's escrow fee as charged

ees to pay, outside of escrow, and before delinquency, all taxes on personal and/or real property not conveyed through this escrow

on above described property, and you are not to be concerned therewith

_____ guarantees that the premium on any insurance policy which he hands you or causes to be handed you in this escrow has been paid in

policy has not been hypothecated.

insurance of title and insurance policies, if any, to holder of first encumbrance, or order. If any. Make disbursements by your check

s in my favor to be mailed to my address shown below unless you are otherwise instructed

ditions of this escrow have not been complied with at the time herein provided, you are nevertheless to complete the same as soon

cept as to time) have been complied with, unless I shall have made written demand upon you for the return of money and/or instru-

CE, DEMAND OR CHANGE OF INSTRUCTIONS SHALL BE OF ANY EFFECT IN THIS ESCROW UNLESS GIVEN IN WRITING

FFECTED THEREBY. In the event conflicting demands are made or notices served upon you with respect to this escrow, the parties

be that you shall have the absolute right at your election to do either or both of the following: withhold and stop all further pro-

formance of this escrow, or file a suit in interpleader and obtain an order from the court requiring the parties to interplead and lit-

several claims and rights amongst themselves. In the event such interpleader suit is brought, you shall ipso facto be fully released

all obligations to further perform any and all duties or obligations imposed upon you in this escrow, and the parties jointly and

and you all costs, expenses, and reasonable attorney's fees expended or incurred by you, the amount thereof to be fixed and a judgment

by the court in such suit.

not to be held liable for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in this

entity, authority, or rights of any person executing the same, nor for failure to comply with any of the provisions of any agreement,

instrument filed herein or referred to herein, and your duties hereunder shall be limited to the safekeeping of such money, instruments,

received by you as escrow holder, and for the disposition of same in accordance with the written instructions accepted by you in this

a hereto further agree, jointly and severally, to pay on demand, as well as to indemnify and hold you harmless from and against all

ments, attorney's fees, expenses, obligations and liabilities of any kind or nature which, in good faith, you may incur or sustain in

rising out of this escrow, and you are hereby given a lien upon all the rights, titles and interest of each of the undersigned in all

other property and monies deposited in this escrow, to protect your rights and to indemnify and reimburse you under this agreement.

ed by the parties hereto that so far as your rights and liabilities are concerned, this transaction is an escrow and not any other

and you are an escrow holder only on the terms expressed herein, and you shall have no responsibility of notifying me or any of the parties

sale, resale, loan, exchange, or other transaction involving any property herein described or of any profit realized by any person,

broker, agent, and parties to this and/or any other escrow included) in connection therewith, regardless of the fact that such trans-

acted by you in this escrow or in another escrow.

tructions may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be

and said counterparts together shall constitute one and the same instrument.

nded, supplemental, or additional instructions given shall be subject to the foregoing conditions.

REGOING TERMS, CONDITIONS, PROVISIONS AND INSTRUCTIONS HAVE BEEN READ AND ARE UNDERSTOOD AND

ACH OF THE UNDERSIGNED.

_____ Address _____ c/o Laurence B. Martin _____ Phone VA 1414

Richman Tidwell _____ Martin, Hahn & Camusi _____ Zone _____

_____ Address _____ 530 W. 6th St. Suite 701, LA 14 _____ Phone _____

_____ Zone _____

SELLER February 26, 1954, 19

REGOING TERMS, CONDITIONS AND/OR INSTRUCTIONS ARE HEREBY CONCURRED IN APPROVED AND ACCEPTED

the expiration of the time specified on Page One of the Buyer's Instructions I will hand you all instruments and money necessary of

comply therewith, including a deed of the property described, executed by F. I. RICHMAN and LYDA TIDWELL,

n as Lyda Nagel, Trustees under Declaration of Trust known as "Richman Trust" dated November 1, 1945

ized to use and/or deliver when you hold in this escrow for the account of F. I. Richman

00.00, net _____ and instruments deliverable to me under these instructions _____

_____ s. None _____ to _____

_____, whose address is _____

ing any of the printed provisions herein I, the undersigned, F. I. Richman

at any expense under this escrow.

that the Dismissal with Prejudice and the Satisfaction of Judgement will be re-

filed in the United States District Court action referred to in the Buyer's

and the filing thereof shall constitute the delivery thereof to me.

of escrow deliver to me the General Release signed by Lyda Tidwell in my favor

of said United States District Court action.

e. Enright: I propose as Exhibit F two documents dated October 22, 1953, both pertaining to the Control Oxyaire.

2. Powsner: May I see those?

Mr. Enright: Surely.

3. Powsner: I will stipulate they be admitted, subject to explanation and evidence, unless we, of course, can arrive at a stipulation between now and 1st concerning these contracts.

the Court: All right. They are received.

(The documents referred to were marked Defendants' Exhibit F and were received in evidence.)

DEFENDANTS' EXHIBIT F

Letterhead of Air Pollution Control, Inc.]

F. I. Richman October 22, 1953
South Hill St., Los Angeles, Calif.

Mr. Richman:

We are pleased to quote our price of \$1,450.00 for the installation of our Catalytic Unit to eliminate smoke, fly-ash and particulate matter, in conjunction with the incinerator in the Canterbury Apartments, located at 1746 N. Cherokee, Hollywood. Price quoted includes the following:

(b) Install electric locks to each hopper on every floor.

(c) Complete gas line to each dehydrating burner in existing incinerator, as well as gas line to each unit.

(d) File applications covering Los Angeles County Air Pollution Control District permit.

(e) Equipment will be guaranteed as follows:

1. For a period of two (2) years from date of approval, against faulty material or workmanship.

2. To give complete operating satisfaction.

3. To conform to Los Angeles County Air Pollution Control District requirements for the next five (5) years—when operated according to our written instructions.

All materials used in construction described above will be new and of first quality. All labor to be performed by men experienced in incinerator construction.

Price quoted does not include labor and materials in the nature of maintenance or repairs to existing incinerator and stack.

A deposit of 10% of the above quoted amount required upon execution of contract, balance which is payable upon receipt of the Los Angeles County Air Pollution Control District permit to operate.

Thanking you for the opportunity to submit this
petition, we are
Very truly yours,

Air Pollution Control, Inc.

P/db

Hal B. Phillips

Whereby accept the offer of the Air Pollution
Control, Inc. as outlined on pages one and two of
this quotation and agree to pay the sum of \$1,-
00 and upon execution of this contract we are
depositing a deposit of \$150.00.

Date: 10-23-53.

/s/ Richman Trust

/s/ By F. I. Richman, Owner Agent

Accepted by: Date 10-26-53.

Air Pollution Control, Inc.

/s/ By B. Manalis, V.P.

[Duplicate copy attached.]

Mr. Enright: The next, either by stipulation or
reference to the present court record, is the
Cromwell Smog Control permit, pertaining
to the Oxyaire Company. The permit was issued on
March 9, 1954.

Mr. Powsner: Is that permit in the record?

Mr. Enright: The physical document is not, but

files, the plaintiff's files. It was received through the mail.

Mr. Powsner: I will stipulate that that goes in evidence. I don't know what it says.

Mr. Enright: Will you locate it?

Mr. Powsner: Yes.

Mr. Enright: And the permit——

Mr. Powsner: Dated March 9th?

Mr. Enright: Yes. Likewise, there was a permit for the Canterbury, which I think is involved in your amounts here, and it was issued March 9th. Will you locate that?

Mr. Powsner: Yes.

Mr. Enright: And the same stipulation as to the going into evidence?

Mr. Powsner: Yes. We will stipulate that as to the dates. You have a right to put the documents in evidence, if you wish.

Mr. Enright: Stipulate they go into evidence.

Mr. Powsner: I haven't seen them. I don't know what the dates on them are.

Mr. Enright: That is all right.

(The documents referred to were marked as Defendants' Exhibit G and were received in evidence.)

AIR POLLUTION CONTROL DISTRICT
COUNTY OF LOS ANGELES

PERMIT

IS HEREBY GRANTED TO

OLIVER CROMWELL APARTMENT HOTEL - RICHMAN TRUST, DBA

TO OPERATE

FE-FED INCINERATOR, MODIFIED WITH A OXYAIRE U-UNIT WITH AFTERBURNER

LOCATED AT

418 South Normandie Avenue
Los Angeles 5, California

SUBJECT TO THE FOLLOWING CONDITIONS

N O N E

THIS DOES NOT AUTHORIZE THE EMISSION OF AIR CONTAMINANTS IN EXCESS OF THOSE ALLOWED BY
ARTICLE 2, ARTICLE 3, OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFORNIA OR THE RULES
AND ORDINANCES OF THE AIR POLLUTION CONTROL DISTRICT.
IT CANNOT BE CONSIDERED AS PERMISSION TO VIOLATE EXISTING LAWS, ORDINANCES, REGULATIONS
OR OTHER GOVERNMENTAL AGENCIES.

REVOCABLE AND NOT TRANSFERABLE

19, 1954

No. 8219

GORDON P. LARSON, DIRECTOR

By

Business Manager

POST NEAR OPERATING EQUIPMENT

76P236 10 53

424

AIR POLLUTION CONTROL DISTRICT
COUNTY OF LOS ANGELES

PERMIT

IS HEREBY GRANTED TO

CANTERBURY APARTMENTS

(JAMES M. UDALL, INCORPORATED, DBA)

TO OPERATE

FIVE FED INCINERATOR WITH TWO METTLER #4 RS GAS BURNERS
AND AN OXYAIRE U-UNIT WITH A METTLER #9 RS GAS BURNER

LOCATED AT

1746 North Cherokee Avenue
Los Angeles 28, California

SUBJECT TO THE FOLLOWING CONDITIONS

N O N E

THIS DOES NOT AUTHORIZE THE EMISSION OF AIR CONTAMINANTS IN EXCESS OF THOSE ALLOWED BY
ARTICLE 2, ARTICLE 3, OF THE HEALTH AND SAFETY CODE OF THE STATE OF CALIFORNIA OR THE RULES
AND ORDINANCES OF THE AIR POLLUTION CONTROL DISTRICT.
IT CANNOT BE CONSIDERED AS PERMISSION TO VIOLATE EXISTING LAWS, ORDINANCES, REGULATIONS
OR OTHER GOVERNMENTAL AGENCIES.

DEFENDANT'S EXHIBIT G

DEPT
EX G

r. Enright: That would be the defendants', your [589] Honor.

he Court: What do you wish to put in?

r. Powsner: I think Mr. Enright has pretty covered the exhibits. The letters of February 19 and 26th, constituting a contract, are part of the record, are they not?

r. Enright: I would propose they be more definitely made a part of the record, as an exhibit for reference, to the objections by the defendant to the Receiver's accounting. That is where they are in the record.

he Court: So ordered.

r. Enright: That would be Exhibit H. That would be the two letters, one dated February 19, 1954, and the other dated February 25, 1954.

r. Powsner: Those are the letters made exhibits in your first objections?

r. Enright: My objections, defendants' objections.

(The documents referred to were marked Defendants' Exhibit H and were received in evidence.)

[Printer's Note: Defendants' Exhibit H, two letters, one dated Feb. 19, 1954, and the other Feb. 25, 1954, attached to Defendants' Objections, set out at pages 139-144 of this record.]

r. Powsner: I have nothing more to offer in

be some more stipulations which could possibly reached here and now. [590]

The Court: All right.

Mr. Powsner: The amounts in connection with Mr. Richman's claims. We could stipulate that the cash fund was \$785.00.

Mr. Enright: I had assumed that had been stipulated to.

The Court: The parties both have treated it as that amount.

Mr. Powsner: I don't know the state of your knowledge concerning the rents which you claim were collected by Mr. Hallberg, which were January rents and which were turned over to Mr. Tidwell's agents.

I have information from Mr. Udall setting out the precise amounts which are February rents, which Mr. Richman should have correct information, and that those amounts, or, the total is \$1,290.59, but \$1,300.28, and that is divided up as follows:—

Mr. Enright: We will not accept the greater amount.

Mr. Powsner: That greater amount, I am standing to point out to you of what it is made up.

Mr. Enright: I would stand on the \$1,290.59. I know how you got your \$1,300.28. It is a pro rata basis, and we do not agree to a proration. It is stated in Mr. Camusi's letter of March 30th.

. Powsner: In other words, we are at issue those amounts?

. Enright: I will agree you could offer evidence it was \$1,300.28, if you so desire. We say the amount is \$1,290.59.

. Powsner: There is some confusion as to what we are talking about here. When I mentioned 0.28 I referred to a total which, it is our position you have mistakenly assumed is entirely February rents. It is our position that only \$424.34 of that amount is February rents.

. Enright: I cannot so stipulate.

. Powsner: Then we could stipulate that the defendant's fees for November, of \$3,104.13, have not been paid?

. Enright: I will accept that stipulation.

. Powsner: That is all I can propose, your Honor.

The Court: Well, it seems that you still have some fact issues, as to which evidence will be necessary, unless you get together on stipulations which look too hopeful. Perhaps by July 6th you will have worked out your stipulation. If you have worked out further stipulation the court will give you a date for taking the evidence.

. Enright: Your Honor, before we do become involved in what could be a trial lasting, I would estimate maybe two days, there is a point of law that

The \$58.80 item on the smog equipment I will forfeit rather than go to trial on, leaving only question of rents.

Now, the point of law I make is this: There has been received in evidence by stipulation already the escrow instructions. They have been received in evidence, the February 19th offer from the defendant to the plaintiff, and February 25, 1954 acceptance by the plaintiff of the defendant's offer.

The Court: And the release.

Mr. Enright: And the release. Now, my point is this: That the escrow instructions specifically provide there be no proration of rents if the court is to rule upon that written instrument, three documents constituting the instrument, or, if they were the two letters, the offer and acceptance. The printed evidence is not admissible, I don't think. I am satisfied it isn't.

At least in my own mind there is no issue of proration remaining, because the escrow instructions are clear that there be no proration of rents.

I have it here, if you care to read it. And I have in mind the specific provision on page 2 of the escrow instructions, "The Following Adjustments Only Required In This Escrow:" [593]

When it comes to rents there is "None."

The typewritten portion of the escrow specifically provides, on the first page:

"Notwithstanding the printed provision in the

of the policy of title insurance, revenue stamps recording and filing all instruments and documents and the seller's escrow fee.

These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and the bank and with which agreement the California Bank is to be concerned."

The point is this, your Honor: The February 19, 1954 letter, offer, provided for an escrow, contemplated an escrow.

The February 25, 1954 acceptance accepted the offer as it was written. Somehow we might logically conclude there is uncertainty as to the meaning of the offer and acceptance.

But if there is uncertainty, that uncertainty was completely cured and perfected by the written escrow instructions that I have just read, or the whole of the written instructions, if one wants to add all of them. [594]

Now then, if the plaintiff here expressly in writing agreed that there be no proration of rents, and the rents were to remain in the hands of the Receiver until 5:00 p.m. February 28th, and the plaintiff agreed to receive the rents commencing March 1st, the escrow instructions specifically provide for no proration of any kind. The escrow instructions specifically provide——

provide, "The Following Adjustments Only Are
quired In This Escrow:"

It then goes on and enumerates taxes and various
other items, and after each and every one the word
is printed in as follows: "None," N-o-n-e.

My point is this: That it is a question of law
for the court to determine from the instruments themselves
as to whether there is any proration of real estate taxes.

If the court determines in the defendant's favor,
then there is no occasion to stipulate. I am merely
stating here, to avoid the necessity of going to the
jury on fact which I will object to, or evidence pertaining
to fact, which I will object to, as being an attempt
to vary the terms of the written agreement.

The Court: The court sustains your objection.
I think [595] parol evidence takes care of it,
parol evidence rule, I mean.

Mr. Enright: Yes.

Mr. Powsner: May I say, in connection with
Mr. Enright's objection to the introduction of evidence,
I think there is no question of parol evidence being
introduced to modify the original escrow instructions.
The escrow instructions specifically provide that
"These instructions are not intended to and do not
amend, alter, modify or supersede any agreement
outside of escrow between F. I. Richman and Mrs.
Mrs. Tidwell.

Obviously, that provision does refer to agreements,
instruments, the outgrowth of escrow, and would refer
to the instrument which is being introduced in evidence.

most accurately show that escrow instructions in their interpretation, subordinated to a written contract by which they are arrived at.

The Court: Are you contending there was a written contract which provided for proration?

Mr. Powsner: That is correct.

The Court: I will set aside the ruling and examine the evidence and see if it includes such a contract.

Mr. Enright: Yes. In other words, the court will examine the two letters and then examine the escrow instructions and then rule—— [596]

The Court: Yes.

Mr. Powsner: Subject, your Honor, of course, to the arguments as to the meaning of that contract?

The Court: Yes. That will be one of the subjects that is to be argued here on the 6th.

Mr. Powsner: Yes. As I understand, your Honor is not going to make the requested ruling at this time now, but just to answer Mr. Enright, the point is that the instructions do refer to the prior contract and says it is not intended to supersede them, but the authorities submitted point out, not only that the escrow instructions supersede the contract, but it is definitely subordinate in its meaning and interpretation to the former contract.

The Court: Yes.

Mr. Powsner: Which former contract, at least

be construed most strongly against Mr. Richman.

I want to answer Mr. Enright, to point out that the authorities show—and I don't think Mr. Enright has submitted any authorities to counter against this—it is our contention the authorities do show that the contract contained in the letters of February 19th and February 25th prevail over contradictory provisions in these escrow instructions.

And in construing that contract, to see if it contains [597] provisions to prevail over the provisions of the escrow instructions, that that contract must be construed most strongly against Mr. Richman.

Mr. Enright: Are you through?

Mr. Powsner: Yes.

Mr. Enright: My point was that I invited the ruling by the court interpreting and construing the letters and the escrow instructions, or without the escrow instructions, and if the ruling were favorable to the defendant there would be no occasion for our issue of fact.

I am willing to stand on the very authority that I have particularly—and I quote from their own memorandum:

“In *Pigg vs. Kelley*, 92 Cal. App. 329, it was held that where a written agreement of sale and escrow instructions connected therewith show by their terms that they refer to the same sale, the two instruments must be construed together under Civil Code 1642 to ascertain the whole contract between the parties.”

am attempting to avoid an issue of fact. I will
avor to stipulate and will meet at counsel's
venience any time between now and July 1st.

r. Powsner: Yes, we have stipulated to that.

r. Enright: Any other evidence? [598]

r. Powsner: No other evidence that I have.

I to understand you are abandoning your re-
t for a ruling at the present time?

r. Enright: No. I am still requesting it. I un-
stand the court——

ne Court: I understand he is still requesting
don't want to rule precipitously, until I have
opportunity to reflect on it.

r. Powsner: May I request then it be made
g with the other issues in the case, after briefs
memorandum are submitted by us, or oral argu-
t or introduction of evidence, depending on
t agreement we reach?

ne Court: It would have to be made before the
is closed. It might be a ruling which would
v the introduction of evidence. It might be a
ng which would foreclose some evidence you
ld wish to offer. I will have to make it before
case is concluded.

r. Powsner: Your Honor is now referring to
ling as to the legal effect of the escrow instruc-
s and the written contract?

The Court: But you haven't stipulated as to legal [599] effect of the instruments themselves.

Mr. Powsner: That is right. I would want to include those issues in any further argument memoranda or brief to be made.

The Court: You may do so. And that is what we will rule on before the case is closed. I will let you on July 6th at 9:00 o'clock or receive your briefs on those points, and we will have given you some matter some study, so that I can possibly let you know immediately.

Mr. Enright: May I comment that if the court does find a few moments' time—and I know time is pressing—then we might avoid our question of fact as to this \$4,499.29 February rents they collected they collected.

The Court: Yes.

Mr. Powsner: I don't mean to be insistent. I don't want to misunderstand. In other words, your Honor is not going to make that legal ruling before giving us a chance for further argument on that legal point?

The Court: Not at all. Not at all. It is going to be argued before it is decided.

Mr. Powsner: One other confusion I have. Assuming we cannot get together and completely dispose of the case by stipulation, plus written memorandum, and assuming that I understand that the situation that will take place July 6th will simply

e Court: On July 6th we will hear argument
is particular question.

. Powsner: I see.

. Enright: I don't know what you want to
about this envelope. I believe if they could be
back, I am quite sure I can demonstrate to

e Court: You think it is a matter that can
disposed of by stipulation?

. Powsner: I think we ought to have these
we discuss the matter.

e Court: Yes.

. Enright: This transcript will be written up
we will have the benefit of it for further
ing.

e Court: That is my understanding.

. Powsner: Yes, I am requesting that it be
en up at the present time.

. Enright: I can't propose anything else, your
r, to close this matter.

e Court: Well, I wish you luck in your dis-
ons.

. Enright: Thank you.

. Powsner: Thank you.

(Whereupon, at 2:55 o'clock p.m., Monday,
June 21, 1954, the hearing in the above-entitled
matter was adjourned.) * * * * * [601]

ject of settlement of the trustee's account or, rather, the Receiver's account. Is that right?

Mr. Camusi: Yes, that is right.

Mr. Enright: As I understand the matter, Honor.

The Court: Who wants to make the first argument or be first in the making of the final argument?

Mr. Enright: I will be glad to be heard, Honor.

The Court: All right.

Mr. Whyte: Might I request the court's indulgence before we begin?

I believe this session today has to do with adjustment of the accounts between Mrs. Tidwell and Mr. Richman. The argument with respect to the Receiver's report and the fees have already been argued.

Might I inquire of the court what I should say about these bills again?

There is a bill in the sum of \$89.20 to the porter on account of copies of the Receiver's deposition and of my deposition taken by Mr. Richman.

There is also a bill in the sum of \$100.00 as a fee [603] for the expert witness, who testified to the reasonable value of Mr. Hallberg's services.

Would the court care to instruct as to what position should be made of those bills?

The Court: Yes. The court should instruct

e Court: You might just file the bills with the
here, and he can give them exhibit numbers.

. Whyte: Would either counsel like to see
?

. Enright: Yes. Not at this time.

e Court: My offhand feeling is that the re-
c has finished paying bills, as such, and that
are more in the nature of costs, but I want
answer, and I won't know until the books are
available.

. Whyte: Very well, your Honor.

e Court: I am somewhat surprised to see you
since the argument has been made upon your
and those of your client, and I don't think it
necessary for you to remain. I assume you are
to ask permission——

. Whyte: Yes, I was going to ask if I might
reused, unless the court would request me to
in.

e Court: You are very welcome, but since all
ers concerning your petition and those of your
t have been [604] argued, insofar as they refer
ose parties, your further attendance is not
red.

. Whyte: That is just fine, your Honor.
k you.

(Whereupon Mr. Whyte retired from the
courtroom.)

Enright: May it please the court: On the

in evidence, on behalf of the defendant, Mr. Richman, I objected to the introduction of certain evidence on the part of the plaintiff pertaining to proration and pertaining, for example, to the escrow expenses or the Revenue stamps.

My objection was stated in the transcript shown for that day, and on page 25, after the court had sustained my objection, the plaintiff's counsel argued that they had further argument or evidence to support their position that there be a proration and at line 18 the court stated:

"The Court: Are you contending there was no written contract which provided for proration?"

"Mr. Powsner: That is correct."

Now, with those simple preliminaries I am going to show we are back to the basic proposition as to whether or not the February 19th offer of settlement and the February 25th acceptance, being Exhibit H, constituted a contract. [605]

I am sure there was no dispute in anyone's mind that that did constitute a settlement agreement.

Now, the next question is whether or not that agreement, composed of the two letters, provided for proration of taxes, rents, payment of escrow expenses, the revenue stamps to be put on the seller's deed, Mr. Richman's deed, and it is our position to stand that the statement is clear and does not provide for those payments.

Now, assuming that the agreement is ambiguous

s of that agreement eliminate any possibility of
ate.

ow, we both submitted our memorandum or our
ments, and the plaintiff herself cited two or
e cases which showed definitely that the written
ement and the escrow instructions were to be
together. The escrow instructions clarify it, if
e was any uncertainty in the written agreement.

ow, since then, and over this week end, I ran
ss a very recent District Court of Appeals de-
n, a California District Court of Appeals deci-

It is *Leiter vs. Handelsman*, decided May 7,
, reported at 270 Pac. 2d. 563. It involved a
ten agreement for the sale of a lot on which
parties contemplated constructing a super-
ket, or [606] a market of substantial value, I
x of some \$30,000 and it also involved escrow
uctions. Now, on appeal this is what the Ap-
te Court said, quoting on page 567:

There are two instruments involved here, the
ement of purchase, and the escrow instructions.
re the terms of an executory agreement for
sale of real property are clarified by the pro-
ns of signed escrow instructions, those instru-
ts are to be considered together in determining
understanding of the parties and in ascertaining
e rights and obligations."

temis vs. Westerlind, a citation, and Keelan vs.

directions to carry into effect an executory agreement. King vs. Stanley, supra.

“The agreement of purchase provided that ‘Time is of the essence of this contract, but the time for any act required to be done may be extended no longer than thirty days by the undersigned agent. The escrow instructions contained the following: ‘In the event that the conditions of this escrow have not been complied with at the expiration of the time provided for herein, [607] you are instructed to complete the same at the earliest date possible thereafter, unless we or either of us shall have made written demand upon you for the return of the money or instruments deposited by either of us; in which case you are instructed to return the instruments and/or cash to the respective parties hereto. * * *’ ”

I ask that we not confuse the facts that are in issue, that time is the essence, as the issue here is the payment of the proration of taxes, proration of rents, payment of escrow expenses, because the same principle of law applies to both sets of facts.

Again, I point out that the court said the principle of law is that you read the agreement and the escrow instructions together if the agreement needs clarification, and this is what the Appellate Court has said at page 567, in determining this point.

“Assuming, nevertheless, but not necessarily

What is our exact position here in this case. Assuming that the written agreement was not clear providing that there were to be no proration on these items, we next come to the escrow instructions, just as this trial court did, [608] and this Appellate Court did.

When the Appellate Court said, in deciding that position, and I quote again from page 567, and referring to the facts here, I quote:

The right to make written demand for return of the money or instruments was an integral clear unequivocal clause in the instructions. Even if it was not of the essence, and even if it could be found that there had been a waiver of the pre-time of performance, nowhere has it been suggested in the evidence or in argument that respondents waived their right to make written demand for return of their money after the 30-day escrow period concluded. Were they to be denied that right, the court in effect would be altering the express terms of the contract. Neither a trial nor appellate court has the power to rewrite a contract."

Now, let us examine what these parties agreed on in their escrow instructions, assuming but not conceding that there is ambiguity in the February 1st and 25th original letters constituting the settlement agreement.

The escrow instructions are before the court as

ment. One part of the insert type written provision is:

“Also hold for me Bill of Sale executed by F. I. Richman and Lyda Tidwell, formerly known as Lyda Nagel, Trustees under Declaration of Trust known as ‘Richman Trust’, dated November 1945, to Lyda Richman Tidwell, a married woman as her sole and separate property and covering furniture and furnishings for apartment building located on the above-described properties. My nature thereon as one of the trustees constitute my approval as vendee of said Bill of Sale.

“Also hold for me an instrument or instrument of transfer to me covering all other and remaining assets of said Trust, the same to be approved by my attorney, Laurence B. Martin. I will also hand you for delivery to F. I. Richman at close of escrow a full and complete and general release in favor of F. I. Richman and all other parties named as Defendants in the above entitled United States District Court Action when you can hold for a full and complete release in my favor executed by said [610] Defendants. The form of these actual releases is to be approved by my attorney Laurence B. Martin and by Joseph T. Enright, attorney for F. I. Richman. Notwithstanding the printed provision in these instructions, I agree to pay, in addition to the buyer's costs and expenses in this conveyance, all of the seller's costs and expenses.

struments and documents and the seller's escrow fee.

These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and the bank with which agreement California Bank is to be concerned.

I will hand you a Quitclaim Deed from my husband, Albert Ray Tidwell, covering the above described property creating sole and separate property in me."

Now, that is the typewritten insertion in this escrow instruction, Exhibit F, and it specifically provides, "in addition to the buyer's costs and expenses in this escrow all of the seller's costs and expenses of this escrow and the cost of the policy of fire insurance, revenue stamps, [611] and recording and filing all instruments and documents and the seller's escrow fee" are to be paid by Lyda Tidwell.

Now they come in here and they ask us, or they want to charge us for the whole of the revenue stamps and the escrow fee, and I suppose half of the other items.

In other words, there is no uncertainty in these new instructions.

They will continue on on the proposition of the pro-

“The following adjustments only are required under this escrow.”

Specifically, there are to be no adjustments, specifically, it provides no proration of taxes and no proration of rents.

Now, this paragraph typed into the escrow instructions above the signature of Mr. Richman is significant, and I read it in its entirety. It is added to the printed portion:

“Notwithstanding any of the printed provisions herein, I, the undersigned, F. I. Richman, agree to be at any expense under this escrow.” Now I stand firmly upon the ruling that your Honor [made] on June 21st, when your Honor sustained my objection to the introduction of parol evidence tending to show what the amount of dollars would be on a proration of the taxes.

If there is any uncertainty in the written contract, which is received in evidence as Exhibits being the two letters, it was clarified. It was not modified. It was not amended, or it was not in any manner changed by the escrow instructions.

Therefore, when Paragraph 4 of the offer of F. I. Richman, which was made on February 19th, is to be considered, especially when it is to be considered under these circumstances, as stated in the third paragraph of the letter, and I quote the third paragraph, the letter being addressed to Martin:

ment made contemplates a full release of any all claims that either Mr. Richman or Mrs. ell have or think they have against the other the beginning of the world to the present time. is matter is going to be terminated, it is my e to have it terminated completely and not by of trick terminology which might subject it ner lawsuits in the future." [613]

w, the proposed settlement was in paragraph where this dispute now apparently arises, which we say is completely clarified by the w instructions. It is as follows:

stipulation shall be entered into that the Re- be relieved as of February 28, 1954, and ver buys shall be entitled to all receipts and assume all operating obligations of the Rich-Trust from March 1, 1954, on or until the re-ntment of a receiver as might occur under hereof."

e next paragraph, and apparently they claim ambiguous, because otherwise I don't know they are asking us for these large balances, :

he Receiver shall file his report and after the ent and/or provision for all of the Receiver's s and expenses and operating obligations of man Trust to February 28, 1954, any funds ning shall be divided equally between Mrs. "and Mr. Richman."

what does the term "operating obligations" mean? I know from my own experience in utility cases before the California [614] Public Utilities Commission operating obligations for utility purposes include taxes.

As to what it means between two businesses or a businesslady and a businessman, the lady being represented by attorneys and advisors, and so forth, there is no certainty in the law or in the cases at place, that when that same party signs an escrow instruction two or three days later, which specifically provides, "The following adjustments are required in this escrow," and when it comes down to taxes and when it comes down to rent, maybe I had better read it concerning taxes:

"Prorate taxes, including all items appearing on tax bill except taxes on personal property not conveyed through this escrow, to None."

"Prorate rentals on basis of statement approved by me, to None."

I submit, your Honor, there should be no argument on the proposition; that we have in our trial memorandum, dated June 16, 1954, and I could call that one to your Honor's attention when you have to deliberate on this matter, June 16, 1954, page 9, which is an exact accounting, and which I am sure is correct, and I think your Honor should sustain our objection to the introduction of claim for revenue stamps, escrow instructions

e. Camusi: Aren't you going to comment, or that mean you have conceded the point of the that have been claimed?

e Court: When this matter was set for argument today, everybody said it could be done in a few minutes. You have already taken about 25 minutes. Is it he is relying on his memorandum.

e. Enright: I am not conceding those amounts.

e. Camusi: O.K.

e. Enright: I don't think that I have anything more to add.

(Another case called.)

e. Camusi: Your Honor, in this case we start with this offer letter of February 19, 1954, and,

r. Enright states, there is no question that we unqualifiedly accepted that. And Mr. Enright states that it creates a contract. There is no question that there is a contract providing for the settlement, and that the settlement is ultimate complete, final disposal of this case.

Now, what did they say in that contract? The first point is that there should be mutual releases from the beginning of the world to the present time.

The second point is that both parties shall bear [616] own expenses.

Now, we are the offerees, and we are entitled to that at its face value, that those parties shall

this situation, why should we all of a sudden be liable for Mr. Richman's expenses.

Now, the paragraph on mutual dismissals is the third point. We gave those.

Paragraph four is:

“A stipulation shall be entered into that the Receiver be relieved as of February 28, 1954, and whenever he buys shall be entitled to all receipts and shall assume all operating obligations of the Richman Trust from March 1, 1954 * * *

Now, we have a right to take that to mean when March 1st comes around, when we took possession under this agreement, we were entitled to all of the receipts of moneys, as we were entitled and obligated to pay all of the obligations of the trust, beginning March 1, 1954.

Now, I don't think there is any question that the property taxes in a trust which is concerned with the rental of apartment houses is anything but an operating expense or obligation, and I have cited the case on that point in my [617] memorandum.

Then in paragraph five I think it goes further to state that:

“The Receiver shall file his report and after payment and/or provision”—in other words, the Receiver might not have paid it, but let's make provision for those payments, if he hasn't done so. That is the way I take this to mean. —“the

t to February 28, 1954, any funds remaining
be divided equally * * * ”

w, Mr. Enright states, and I think that pos-
this is where the nub of the contention is con-
ed, he says there is nothing in this contract on
ation, and, therefore, there isn't any prora-
and then you get to your escrow instructions,
that nails it down, but that isn't the case.

ere are authorities directly in point on that
ion. *King vs. Stanley*, 32 Cal. 2d—I might say
I not cite this, or, rather, I may have, but I
not do more than cite it. It is *King vs. Stanley*,
al. 2d. 584, and there it is stated:

* * Equity does not require that all the
s [618] and conditions of the proposed agree-
be set forth in the contract. Though usual and
onable conditions of such a contract are, in the
emplation of the parties, a part of their agree-
.”

ow, here is our position as to the taxes, as to
e proration: I think it is set out right in para-
h four here just how it is to be handled. We
o get the receipts for the month of March.

he Court: Paragraph 4 of your settlement
ement?

r. Camusi: Of the offer letter. I think tha^t
it out, and it also sets out we are responsible
operating obligations from March 1st.

tract are in contemplation of the parties a part of their agreement, and then says:

“In the absence of express conditions, custom and usage terminates incidental matters relating to the operation of an escrow, furnishing deeds, title insurance policies, prorating of taxes, and the like.”

Mr. Enright: Will you give me that citation?

Mr. Camusi: That is 32 Cal. 2d 584, and citing other cases. [619]

In that case the defendant contended that the escrow instructions did not follow the alleged contract obligations but included different terms which had not been accepted by her. In other words, the original contract, your Honor, in that case could not provide, I believe, for her to pay the policy of title insurance, or some of those incidental things which would arise, and the court said:

“The escrow instructions were merely customary and expected directions to the escrow company to carry into effect the executory agreement. Such instructions do not take the place of the agreement of sale, but merely carry it into effect.”

In other words, it was necessary, in order to carry this contract into an executed status, to go into escrow, both sides realized that, and as soon as she accepted this offer unconditionally, both parties were willing this matter go into escrow.

Now, that escrow was just a mechanical device whereby both parties could carry out their in-

certainly, having accepted that, we are not going into escrow and change that contract, and give something they had not bargained for in their contract, unless your Honor believes we did something wrong to change [620] this original contract.

Now, in *O'Donnell vs. Lutter*—and I believe this is a new case, your Honor, *O'Donnell vs. Lutter*, 68 App. 2d 376, the court says that in these contracts of sale there is an implied provision of taxes and rent.

Now, if that case is right, and I think it is, when you look at this agreement, if it does not say so once, and I think it does,—but assuming this contract of Mr. Enright's did not say so on its face, then it is an implied condition of this contract that we will prorate taxes and rent.

Now, we get into escrow, and it is true the escrow instructions and statements attributed to it are by Mr. Enright, but they all say in effect, and recite the substance of what is provided in print in this escrow contract, you will do it this way in this escrow. Now, how are we going to ignore the express language of the escrow instructions, which state:

"These instructions are not intended to and do not amend, alter, modify or supersede any agreement outside of escrow between F. I. Richman and —meaning Mrs. Tidwell—"and with which agreement California Bank is not to be concerned."

vehicle by which we can carry our agreement to completion.

So it is our contention that the meaning of the contract goes right back to the offer letter of Enright, and since we paid approximately the same amount as set forth, close to \$5,000.00 in taxes for the first two months of the year, January and February, it is our contention that those expenses for operating obligations and should be shared equally by the parties. What happened was we had to pay them all, and Mrs. Tidwell paid all of those out of her own pocket.

I think that answers the argument on the taxes, and it also answers the argument on the prorated taxes. It answers the argument on the seller's escrow expenses. Why should we pay Mr. Richman's expenses when the agreement specifically states that each party is to bear his own, and, further, when it is an implied condition of the contract that the seller pays his escrow expenses.

It also answers the question of the revenue stamps.

Incidentally, there are two acts involved with the question of the stamps on a deed. The last one is the Act of February 24, 1919, 40 U.S. Stats. 1.

The court at 15 Cal. Jur. 2d., Section 1777, in *Cole vs. Ralph*, 252 U.S. 286, 240 Supreme Ct. 221, stated [622] that the earlier Act contained language making the deed void, and that a deed would be inadmissible in evidence if it did not have

Government cannot tell us what is or what is legal conveyance in this State, and the conveyance is legal, but there is still a fine and a criminal action, as well as civil, against the party for failure to put stamps on the deed. That is an obligation by custom, as well as by law, on the seller, and why should we pay for the revenue stamps, and why should we pay the expenses that are attributed to the seller?

In the other case which states that these usual and reasonable terms are in contemplation of the parties, a part of such contract is *Janssen vs. Davis*, 219 N. C. 83, at page 788.

Now, on the question of proration, I was not present, but I read the transcript of the proceedings had on this question, and Mr. Enright stated he was willing to stipulate that the Receiver had collected \$1,290.00, or, rather, that Mr. Udall, Mrs. Udall's representative, had turned over to him the sum of \$1,290.59, which represented rents which had been collected near the end of the month of January, and turned over to the plaintiff in this case. [623]

Now, this point was not made, your Honor, but in our contention that of that sum, anyway, only \$34 was February rents, and if the court believe that a proration is the proper thing in this case, I think a sub-accounting should be had to

paid, so that in that sense it can be seen that during the month of February certain rents were collected which were properly for the month of March. I would like to offer those into evidence, together with these utility bills.

I noticed in the transcript that Mr. Enright we might introduce the utility bills into evidence and I offer those exhibits at this time.

Mr. Enright: To which objection is made upon the grounds heretofore argued, and heretofore sustained, and if such documents are received in evidence of necessity there will be created an issue as follows:

Concerning the real-property taxes, which are claimed to be some \$4,000.00, if proration is to occur, of necessity there will have to be proration of the personal-property tax claims paid by Mr. Roman on personal property on a much larger sum.

Second, as to the rents received by the manager before [624] March 1st, which under the court order were to go to the Receiver, and which in fact were picked up by Mr. James Udall, there is no dispute in the evidence concerning those, in the amount of \$1,290.59, it can be prorated, and then, of necessity you must look into the rents, the delinquent rents that were collected in March, because if we are going to prorate, we will have to prorate both ways to be equitable and fair.

Thirdly, if we are to prorate utility bills, it

urtherly, it shows right upon its face that they attempting to charge Mr. Richman with long-distance phone calls, and similar charges.

so, I submit that the tenants pay when they receive their bill for their month's rent, and they would have been paid in March.

And there are a lot of details of questions of fact, and if we are going to entertain some implied covenant to prorate, or some implied custom to prorate, and we have this express contract, I submit that if we try the matter we will take at least a number of days to hear it.

The Court: Sustained. Just a moment.

(Another case called.)

The Court: Proceed.

Mr. Camusi: I don't know what that ruling means. If [625] it means your Honor does not care to take evidence at this time, and you are to decide whether recounting should be had, that is perfectly agreeable to us, but I hope it does not mean your Honor has ruled before I shall have made my argument as to what the law is on this issue in the case.

The Court: If on the main contention I should immediately decide you are right, we will refer the whole question to a Master for the taking of evidence.

Mr. Camusi: I see.

The Court: But I think at this time that you are

against your contention, although that is tentative.

Mr. Camusi: I would like to call the court's attention to this, that when a person makes an offer saying that the offeree must assume all operating obligations from March 1st, certainly the offer must be interpreted, if it is capable of two interpretations, must be given that favorable to the offeror since the offeror has chosen the language.

It is difficult for me, looking at this offer, to see how we can be held solely responsible for taxes, and how we should personally assume obligations which occurred [626] prior to March 1, 1954.

That is the point I am making, and that is that these obligations had occurred prior to March 1, 1954, and they were operating expenses and obligations in prior months.

Now, with respect to the petty-cash fund, that was a trust. Again looking at the offer, we purchased in effect, all of the rights, title and interest of Mr. Richman in and to the assets of this trust. One of the assets was the petty-cash fund. That does not even fit into Paragraphs 4 and 5. It is not an obligation of the trust. It is not a receipt. It is an asset that is used for all purposes, as any petty-cash fund is. There is nothing special about the petty-cash fund. We purchased that, and now Mr. Richman wants half of that.

The question also arises as to this fee Mr. Richman has been claiming. This was a fee for November

ze there was a judgment of record, and unless a trial had been granted, or the judgment had reversed on appeal, that judgment would be final. That judgment voided the trust, cancelled it, and there was a finding that the fees of the lawyer had been excessive, and then I believe the court made a finding that six per cent would have been a reasonable fee. [627]

Looking at that as the background here, we had a situation where, had that judgment remained intact, we would have had a good claim on Mr. Rich-
for that additional four per cent charged Mrs. Tyrell over a period of some years, amounting to good many thousands of dollars. Now, we read—

the Court: I am sure that you would.

Mr. Camusi: How was that?

the Court: This trust was not void, but voidable, and when she coasted along with it for years, and paid part of the burden, wouldn't she have accepted it until a certain period of time? Just to get away from having laches run against her, wouldn't she find herself with what she accepted?

Mr. Camusi: That isn't what I read in the cases. The court held if the fees were excessive at the cancellation of the trust, she would have a return of the excessive fees.

dently, he is relying on Paragraph 5, so let's devote our attention to that:

"The Receiver shall file his report and after payment and/or provision for all of the Receiver's claims and expenses and operating obligations *"

It does not talk about Mr. Richman, and under the first paragraph, if we have to pay this, it is a personal obligation that is owed by Mrs. Tidwell to Mr. Richman, and yet both parties have mutually released each other of any claims.

To my mind it is inconceivable, under the wording of this offer, that Mr. Richman should be paid one-half of the fee which he had been charging for all of those years, and which this court held to be an excessive fee.

Now, I would like to say this to the court about that mortgage payment. I satisfied myself that this is actually an obligation paid by the Receiver in the month of March, and in line with my agreement on what is right, I am willing to stipulate here that that should have come out of their joint funds, or, rather, that should be paid by Mrs. Tidwell individually rather than coming out of the joint fund.

Apparently I am not going to get any stipulations in the other direction, however, favoring

There again the Receiver paid that. We are taking technical advantage of that. If it is an obligation that becomes due March 1st, all right,

offer as made by Mr. Enright, and provision
be made for those out of this fund, so that
Mrs. Tidwell does not pay the 100 per cent
of her own separate funds.

Enright: May I address the court briefly,
in closing, with the statement that whereas
\$2,000.00 should be charged to Mrs. Tidwell,
certainly, is not going to obtain any admis-
sion from me that that \$750.00 petty-cash fund
should not be charged to Mrs. Tidwell. It should
be charged against her.

In my opinion, your Honor, we introduced in
evidence as one of the exhibits to this pretrial, the
affidavit of February 26, 1954, which evidences
the signature of both attorneys, and the order made
by your Honor on February 26, 1954, to finally
close this matter up, and it very clearly spells out
that the Receiver is to retain the money in the bank
under his control. He had five managers out there,
that money was under his control, and when
James Udall is going out and picking it up on
Monday morning, that is not going to obtain a
discharge from me that we should split with any-

Now, your Honor's ruling, I think, disposes of
the contentions made by the plaintiff here, that is,
they are not permitted to come in here by
the defendant and have the terms of their written

again I [630] refer to page 8 of my memorandum which contains the accounting.

I might refer, briefly, to page 9, to Mr. Enright's \$3,104.00 fee, under the written contract which the court held was voidable, and that is included in the Receiver's report, there being no claim of that charge, and our charge is against the Receiver, so we did not want to go through the circuitry of prosecuting the claim against the Receiver, and then back out against the other parties.

We will submit the matter.

The Court: The court will have to go through all these memoranda. I had gone away after the last hearing and had not given *Tidwell vs. Rich* any great attention. I had expected, being the lawyers you are, that you would cut across the legal issues and get this matter settled. But since you haven't, the matters are pretty well set out in the legal memoranda, and I will take it under consideration and give you a decision rather quickly, at least, as quickly as I can.

That disposes of our 9:00 o'clock calendar.

(Another case called.)

Mr. Enright: May I address the court?

The Court: Yes.

Mr. Enright: I thought it might be a convenience to the court if I left the advance opinion in the *Leiter* case. [631]

The Court: Surely.

cludes most of the citations, and it is the memorandum of points and authorities of plaintiff regarding pretrial hearing on distribution of funds, was filed by plaintiff June 16, 1954.

the Court: Very well. [632]

* *

Los Angeles, Tuesday, Oct. 12, 1954, 9:30 a.m.

the Court: We are on the record, but in a sense in that this is not a proceeding in open court, my law clerk reported to me one day last week he had heard from Mr. Whyte, and Mr. Whyte very emphatically dissatisfied with the fee which the court awarded him.

He wanted to know by what process it might be brought to my attention, and the law clerk reported he told him it would be brought to my attention by his coming in and telling me.

He indicated at that time a willingness to have the matter presented either formally or informally. Counsel being of the view that they wished to proceed informally, we are here informally upon informal notice, but Mr. Richman is present personally, and Mr. Enright is here and Mr. Camusi is here. Mrs. Tidwell is not here. Mr. Whyte is here.

Mr. Whyte: Mr. Hallberg is ill at home with a back. Otherwise, he would have been here.

the Court: Well now, what do you want to urge?

Mr. Whyte: I propose to examine the amount of

If I might circulate [634] these breakdowns of hours devoted among the court and counsel.

Mr. Enright: May I inquire, is this some evidence or additional evidence being presented?

Mr. Whyte: No.

The Court: No, this is just an informal conference, Mr. Enright. If it comes to a point of taking evidence, we will adjourn to the court to take it there. So if you want to offer evidence, as evidence, let us know and we will proceed that way.

As it is, I am simply holding a conference between disgruntled litigants, who are disgruntled with the court today. They used to be disgruntled only with each other.

Mr. Whyte: If the court will note from the page of the original petition for allowance of fees it covered services to and including March 17, 1911. It showed a total of 91 hours of attorney's time.

Quite a point was made in court by Mr. Enright of the fact that I accompanied Mr. Hallberg in collection of rents from apartment house manager before his bond was approved.

My time slip for that day shows six hours of traveling, not only the collection of rents with Mr. Hallberg, but accompanying him to the Union Bank to open a new account in the name of E. Hallberg as Receiver. I propose that six hours be deducted [635] from the 91-hour total shown in the original petition, so there may be no question about the total hours. I have therefore set forth

the supplemental petition for fees covered services to and including May 10th. It showed a total of 28.4 hours of attorney's time, of which eight hours was allocable to services performed in connection with the defense of the Receiver's attorney against Mr. Richman's objections to the allowance of their fees.

As much as the services rendered in defending attorneys against the objections made to their fees are not compensable, I have deducted the eight hours from the total of 28.4 hours shown in the supplemental petition and placed in the right margin the figure of 20.4 hours.

I will briefly run through my time slips since the supplemental petition was filed. May 11th. My time shows five hours devoted to the following services: Telephone call from Receiver re evidence to be presented at May 12th hearing; figuring break-down of hours of attorneys' time for inclusion in supplemental petition for fees to Receiver's attorneys;

studying Hallberg's deposition; conference with Larson Mann in preparation for his direct testimony as to reasonable value of Receiver's services; dictating and revising draft of hypothetical questions to Mann as an expert witness as to the value of Receiver's services.

There should be deducted from that total the

The rest of the time was devoted exclusively to the defense of the Receiver. I therefore place figure of 4.7 hours in the margin.

May 12th. My time slip shows 5.2 hours devoted to the following services: Conference with Hubert Laugharn re his testimony as to the reasonable value of services rendered by Receiver's attorney;

I was in court on the hearing on Mr. Richmond's objections to report and petitions of Receiver and his attorneys for fees;

I spent approximately one hour with Mr. Laugharn that morning before I came to court. I therefore deducting that hour from the total 5.2 hours and have placed the figure of 4.2 hours in the margin as allocable to the defense of the Receiver.

My time slip for May 13, 1954, shows 3.1 hours devoted to the following services: In court re hearing on defendants' objections to report and petitions of Receiver and his [637] attorneys for fees

Telephone call to Mann and thanking him for appearance as an expert witness; 3.1 hours.

The Court: You think your expression of that is something for which you should be paid?

Mr. Whyte: I think my expression of that took about .1 of an hour to telephone, your Honor. If you would like to deduct .1 of an hour from the total, I will be pleased to do so.

courtesy in them, even though courtesy is not
ded, or at least you are not charging for cour-
as such except in this one instance, so far as
have gone with this document. I haven't read
yond where you have now come to.

. Whyte: My time slip for May 14th shows a
of 5.8 hours devoted to the following services:
s in court on the hearing on defendants' objec-
to report and petitions of Receiver and his
neys for fees;

conferred with Mr. and Mrs. Hallberg during
ecesses in the hearing; I prepared and dictated
pothetical question to Laugharn as an expert
ess regarding the value of the attorneys' serv-

pproximately one hour of my time on that day
devoted [638] to preparing the hypothetical
tion to Mr. Laugharn, so that I have deducted
from the total of 5.8 hours and placed a total
8 hours in the margin.

y May 17th time slip shows 3.5 hours devoted
he following services: Conference with Mrs.
berg re matters to be offered in evidence on
s examination of Mrs. Kennedy.

ne court will recall that she was one of the
tment house managers who testified for Mr.
man.

ing as an expert witness, as to reasonable value of my services.

Since that item is not compensable I have placed it in the right-hand margin.

On June 7th my time slip shows 4.3 hours voted to the following services: In court receiver's report and petition for fees as well as attorneys' petition for fees;

Approximately one hour of this total allocated to defense of Receiver and 3.3 hours allocable to defense of Receiver's attorneys.

The court will recall about 11:00 o'clock in the morning I stood up and announced I was ready to present the case for the attorneys for the Receiver. I took the stand and was [639] cross examined after lunch by Mr. Enright.

Mr. Laugharn, my expert witness, took the stand late in the afternoon and was cross examined by Mr. Enright.

May 13, 1954. My time slip shows 3.1 hours voted to the following services: —I beg your pardon. I haven't turned the page.

June 8, 1954. My time slip shows 3.1 hours voted to the following services: In court re hearing on Receiver's report and petition for fees as well as petition for fees to attorneys for Receiver. Approximately one hour allocable to defense of attorneys' fees.

In that connection, the court will recall Mr. J.

time than was allotted to Mr. Fussell's testi-

any event, I have placed the total of 2.1 hours in the margin, which is allotted to the defense of Receiver's fees.

On June 9, 1954, my time slip shows .1 of an hour devoted to the following services: Consideration of letter from Camusi enclosing Department of Emancipation form of notice of delinquent return with request that Receiver prepare same; letter to Hallberg enclosing notice of return.

On June 14th, my time slip shows .3 of an hour devoted to [640] the following services: Telephone call from Mrs. Hallberg re notice of delinquent reform from the California Department of Emancipation;

Telephone call to Laurence Martin re preparation of this return; dictated note to Camusi to be turned to him along with the return.

On June 17th my time slip shows .8 hours devoted to the following services: Study of file in preparation for final argument re objections to Receiver's report and petition for fees.

Approximately .3 of that time is probably allotted to my preparation of an argument on behalf of my own fees, so I have inserted the figure of .5 in the margin.

On June 18, 1954. My time slip shows 1.4 hours de-

Perhaps of that time I spent .5 of an hour defending my motion as to being entitled to fee

I have, therefore, totaled the hours devoted to the administration of the affairs of the receiver during the three-month period on those matters which came up regarding the receivership after termination, together with the time spent defending the attack made on Mr. Hallberg's petition in his report. It comes to a total of 130.6 hours. [If that total is divided into the fee of \$1,000 which the court has awarded to me, it is approximately \$7.70 per hour.

I say in all sincerity if Mr. Hallberg, in my opinion, is entitled to counsel whose competence and ability are worth more than \$7.70 an hour, then in a case in which he should be well represented, if the court feels that my time is worth only that sum, then perhaps I should be removed as counsel.

Now, I think studies of time devoted by attorneys to their practice show that compensable work per month for attorneys who work, work hard is approximately 125 hours a month.

All of us, the court, Mr. Enright, Mr. Richter, Mr. Camusi, have been practicing attorneys. We know that if we can perform six hours of compensable work a day, with the demand on a lawyer for a certain amount of charitable work, office administration, work for which he is not paid,

nce, I have devoted approximately one month's out of a year to the work performed in connection with this receivership.

The overhead in our office is approximately \$50.00 a month, and lest there be any charge that is too high, [642] in our office it runs about 33 per cent of our gross. In most offices the overhead is between 25 per cent and 33 $\frac{1}{3}$ per cent.

My half of the overhead, since I have one partner—there are only two of us in the office—would be \$25.00. On the basis of the fee awarded me by the court of \$1,000.00, I would have made a net profit for a month's time of \$350.00. That is salary which is paid to a lawyer fresh out of law school who begins work at O'Melveny & Myers.

I have been practicing in this city for 13 years, and I have a little more experience than the chap who has had no experience and been employed directly out of law school at a figure of \$350.00.

The court's examine the court's fee from another criterion, namely, the criterion of the testimony presented by the expert witness. It has come to my attention that the court felt that possibly Mr. Laugharn, one of the two expert witnesses, was testifying about his work in connection with receiverships in general and not with respect to the particular work performed in this receivership.

Typically, before I brought Mr. Laugharn to

with the court in connection with the administration of the affairs of the receivership. [643]

He went over carefully the original petition for fees, supplemental petition for fees. He went over the report that I had prepared for the Receiver.

Naturally, he carefully examined the object of the petition filed by Mr. Enright. And the court will recall that on his direct examination I laid that foundation. He testified that he had examined all of those documents.

My question to him as an expert witness was as follows:

“Mr. Laugharn, please assume the following facts:

“John Whyte, the attorney for the Receiver, has been engaged in the active practice of the law in Los Angeles, California, for a period of from 10 to 13 years;

“For 10 years he was associated with the office of O'Melveny & Myers, one of the leading firm of attorneys in this city;

“On or about December 1, 1953, he was employed as attorney for the Receiver herein and has continued at all times to represent the Receiver;

“The Receiver was removed from his active duties of management of the business and affairs of the former Richman Trust on February 28, 1954.

“After the Receiver's removal on that date, John Whyte prepared the Receiver's Report and Filing 53447 from Attorney's Fee Application filed

of the business and affairs of the former Richman Trust;

assuming further that Mr. Whyte performed substantially all of the services specified in the Report and Supplemental Petition for Allowance of Fees for Attorney to Receiver, exclusive of services necessarily rendered by him in defending the Receiver and his attorneys against objections filed by defendant Richman to the Report and Supplemental Petition for Fees of the Receiver and his Attorneys, which said services were performed commencing on or about December 1, 1953, to and including May 10, 1954;

the time devoted by Mr. Whyte to the rendering of said services, excluding services rendered in defending the Receiver and his attorneys against objections raised by the defendant Richman to the Report and Supplemental Petition for Fees of the Receiver and his attorneys, has been approximately 1,000 hours;

The assets of the former Richman Trust, which have been administered by the Receiver, have an estimated fair market value of approximately One Hundred and Two Hundred Thousand Dollars;

On the basis of these facts, what is your opinion as to the reasonable value of such services?"

The court will recall that Mr. Laugharn gave his opinion that the services would be valued at a reasonable amount.

expert testimony adduced by Mr. Richman in position to testimony presented by me.

And I further presented the testimony of Paul Fussell, who is the senior corporate attorney at O'Melveny & Myers, regarding the reasonable value of my services in defending the Recenter against the attack made upon his report and position for fees.

In that connection the court will recall that we were engaged in hearings on six different occasions. Approximately four of those days consisted of a morning and afternoon session, and on two of them there was either a morning or afternoon session.

I have already recited the hours spent in preparing for that hearing. There was a day and half of depositions. Mr. Enright took the deposition of Mr. Hallberg and myself in advance of the hearing.

Mr. Fussell testified, on the basis of those facts and some others which were put to him, that a reasonable value would be between \$1,000.00 and \$1,200.00.

Again, speaking to the court and to those of you who are [645] present and members of the Bar, I think any of us, particularly these gentlemen here who are trial lawyers, appreciate the fact if they are called upon to try a case in court lasting a week, depositions in advance, preparation for the

the court and I had the pleasure of working on the Inglewood Federal case which involved the appointment of a conservator for a savings and loan association in Inglewood. I was one of the counsel, of the interested parties to the lawsuit.

The court appointed a conservator for the Association on a Friday. The conservator arrived at the association between 7:00 and 8:00 o'clock in the morning.

He was relieved from his office at about 11:00 o'clock the following Monday morning. And during the period of time he was almost constantly at the association, and I know that his attorneys performed valuable services on his behalf during that five-day period.

There was one court appearance necessitated on behalf of the attorneys during that period, which was in connection with the order that came from the Washington appointing the conservator from the Loan Bank Board to surplant the conservator appointed by this court.

Hereafter the attorneys for the conservator filed a report covering his services and a petition for payment to him [646] and to themselves. In their petition they stated that they had devoted 40 hours of time to their work on behalf of the conservator.

A hearing was held in this court which took approximately one hour. The only attack made upon

place, and therefore any award of fees to him and his attorneys would be highly improper.

The hearing, as I say, took approximately one hour. No other attack was made upon the report or petition for fees.

Thereafter, the court granted to the conservator a fee of \$2,000.00 and a fee to his attorneys of \$1,000.00.

If I may briefly compare the two cases, in the one case, the conservator case, which I freely admit was an important case, there was a run on the stock market at the time, and an excellent attorney was appointed for the conservator, and the conservator was an excellent man. As I say, the period of conservatorship was about three days. The attorney filed one petition with the court during that period.

Thereafter, they filed a petition for fees alleging 40 hours of services. And one hour devoted to the hearing on that petition in the court.

The fee awarded to the attorneys was \$1,000.00 and to the [647] conservator was \$2,000.00.

In this case the period of receivership was three months. I made approximately four court appearances during that period in the presentation of petitions on behalf of the Receiver, such as a petition for permission to renovate the apartment building, pay bonuses, petition in chambers to have me appointed as the Receiver's attorney.

After the close of the three-month period of

attacks made upon his report and petition for and a day and a half in depositions, preparaworking with the Receiver as to the evidence would be adduced at those hearings.

In this case the fee awarded to the attorneys for Receiver was \$1,000.00 on the basis of 130 , and the fee awarded to the Receiver himself \$6,000.00.

It concludes my remarks with reference to the except that I might make this statement:

My lawyer is embarrassed to come before a court state in his opinion the fees fixed by the court too low. No lawyer likes to be placed in the shameful position of arguing about his fees with court or with counsel.

I am distressed that it should have been necessary for me to ask the court for this opportunity. Thank the court [648] for having granted me the opportunity to present my petition.

I am open to any questions concerning my petition or any other facts which took place during the receivership.

The Court: Having met you outside the court hall as in, and having a personal liking for you, embarrassing to the court to have the matter brought up.

I will recall at the very outset the court had Hallberg here. I had asked him to come in. He

desired a receiver to serve. I said to Mr. Hall and I think I said to you at the very outset, one of the reasons why Mr. Richman has been moved is that he went out and got a life contract for work at an excessive fee.

And there was ample evidence here in court that the fee he was charging was excessive. This was primarily a property management affair. For a Receiver it was to be less demanding in one sense if it had run its normal course, than if he were a trustee under the Richman Trust, for the trustee under the Richman Trust had broader powers and duties than simply those of property management.

The Court was interested, however, that the expense of a brief court supervision of these properties, pending what was then determination of appeal, or it was a promised [649] appeal then the possibility of settlement, the court was interested that the court's administration of the property should not be as costly as that which the court had found was excessive. I expressed that to everyone in the case.

Now, Mr. Hallberg asked for less than he got out of the court. I increased, not the prayer of the petition, but the tenor of his testimony, because I felt that he had not given any account to the court of having to account so fully in court, as he had by the accounting which he had prepared and filed.

to the suit and one of the attorneys to the man with less respect than I have seen embezzlers treated when I was handling the criminal calendar in the court.

As far as the court's desire to hold down the expense is concerned, that is always a desire of the court and should always be a desire of the court.

I remember Judge James—I am always remembering what other judges have said, which is precisely what lawyers are supposed to do, because it is what other judges have said, which establishes a basis of precedents by which we proceed.

I had occasion to resist a fee before Judge James in a [650] matter where an involuntary petition in bankruptcy had been filed. The creditors had been personally dissatisfied before the day of the hearing on whether the man should be adjudicated bankrupt.

The only thing that remained was the fee. The attorneys said, "Well, this was a large estate of a bankrupt. The creditors' claims were large. The fact that relatives had come forward and paid the fee off doesn't relieve us of the fact or the history. I, as an attorney, have rendered services costing a large sum of money, even though the service didn't take a lot." A thousand dollars, I thought, was too much.

Judge James then said, "Lawyers should always remember that the lawyer exists for the litigation

He went on to point out some of the more idiotic statements which have been given by writers on ethics, and the professional as distinguished from the business characteristics of legal profession.

So I thought you were going to have an economic administration. When the petition came the accounting, the court was impressed that the attorney for the Receiver rendered every possible service. I could see no purpose, for instance, going to the bank with a client to open a bank [C] account, particularly where the client had accounting experience, was an established businessman, had been a controller of corporations, and perfectly capable of opening a bank account without the presence of an attorney, or more than the mere casual legal advice on it.

It seemed to me that the legal services had been rendered, no doubt, to the number of hours claimed but to a greater excess than the requirements of the case were.

I at one time acted as attorney in Los Angeles for a corporation which had many properties in this locality, which it had foreclosed upon during the depression days. And I recall, although the business was property management—they had many apartment house managers around Los Angeles—that the requirements of their resident attorney under corporate management, were such as to

call, I think, from Mr. Enright—someone in his office—after we had had our conversation on, I think it was, November 30th, in which the court had indicated that an order should be made for the appointment of Mr. Hallberg as receiver, and Mr. Hallberg should then qualify, and we fixed the bond.

Then I had a call from Mr. Enright or someone in his [652] office to the effect that Mr. Hallberg was about collecting rents and demanding things of tenant house managers, exercising the active powers of a Receiver, and had a lawyer with him, which it turned out was Mr. Whyte.

The court had not signed any order. The proceedings started as a *de facto* receivership, without the *de jure* qualifications.

The Receiver had not taken the oath required of receivers, had not posted the bond required of receivers, had not been appointed by a formal order directed to appoint a receiver.

The quality of the legal advice to a man to go on and embark upon the actual administration when he was qualified legally to do so was not a matter of advice that I am sure you generally hand to Mr. Whyte, because you are known for being associated with cases of considerable magnitude in the courts.

I had some qualms when Mr. Hallberg told me

standard of compensation. And I had in mind that you would get something more nearly like I got when I worked for a corporation, where my fees were fixed by a hard-headed board of directors, rather, my bills were approved by them, and so sometimes the bills were reduced simply because [6] they weren't willing to pay the amount asked for the services which had been rendered.

Then we proceeded in a rather relaxed, it seemed to me, course here, in which the time was spent without all of it being required. You came in and fought for the justification of the Receiver's administration, when the administration was under fire.

The court found it had been a good administration. Perhaps I was not as liberal as I should have been in awarding you fees for representing Hallberg during those rather trying days in court where his every act, from the time that he did similar work, although upon a different legal basis in Chicago some twenty years ago, down to the very moment he was on the witness stand, that I thought perhaps I was a little too conservative in the fees.

We have out in this courtroom a little placard on each of the tables which I modeled after the one in Judge Mathes' courtroom, which he in turn modeled after the one in Judge Jenney's courtroom. I don't know where Judge Jenney bought it. Various judges around here use it. It requires counsel to perform their duties in the courtroom in certain

For instance, you are supposed to stand at the bar when you ask questions. I don't think you did there once, [654] except when you made argument. You lolled around the courtroom in your slippers; without any disrespect to the justice courts, as if this were a justice court. The justice courts proceed in a relaxed sort of in-chambers fashion; federal courts do not.

But we began with an unlawful, improper administration, which the appointment of an attorney for Receiver is the very thing the attorney is supposed to see doesn't happen, because these receivers are busy men and they are not acquainted, unless they are often receivers, and Mr. Hallberg has not been often a receiver, or if ever an actual receiver was there, and I understand from him that if his experience in this case is an example of it that he wouldn't want to be one again, because of the criticism and acrimony which attends being a receiver in such situations which grow out of family unpleasantness, such as we had here, where litigants have a bad temperament that was expressed in some places.

But if you had administered an estate in probate in California and the corpus of the estate were a large amount of money which was handled by Mr. Hallman,—I don't mean the value of the fee of the attorney, but the property, because Mr. Hallberg was essentially

Of course, you probably think that doesn't a because [655] the total value of fee of the various properties involved was over a million dollars.

Now, since all of these things have been considered and with the time the court has now had to rely upon it, I think I was a little low so far as fees are concerned. I think I was, to put it colloquially right on the button so far as Hallberg was concerned.

I will reconsider the fees for the attorney formally, without the necessity of further petition. We don't want to run the fees up any more than they are now. But now, let's start out.

Mr. Richman, if you want to get in this—you are a lawyer and you have had a lot of experience—you don't have to answer me if you don't want—but my idea is to start with you, just because you are at the right of the room, and proceed across to Mr. Whyte, who is most perhaps directly interested, except you, and find out what you think these fees ought to be.

Do you want to express yourself, Mr. Richman? I don't mean in great detail as to why, but give me a figure of what you would consider a reasonable fee for the attorney, and then Mr. Enright, then Mr. Camusi and finally Mr. Whyte.

Mr. Richman: Any statement I would make would be biased by the evidence and my knowledge of the situation. The evidence is that the

ther on it. I refer primarily to the smog mat-
he mess——

e Court: I took that into consideration. Hall-
was delinquent in that; so were you.

Hallberg had been fully advised legally, I
think he would have been delinquent.

. Richman: I think that an attorney should
sponsible for his misdeeds as well as his deeds.
made himself a lot of work there and created
eat deal of embarrassment to me in being
ed criminally with violation. There was no
n for it.

der the circumstances, I feel that what he did
't done properly and caused himself a lot more
and also brought on a lot of discredit to other
iduals on that.

hink he has been paid amply for the services
ndered, the type of services he rendered.

e Court: What do you think of it, Mr. En-
? [657] * * * * *

. Whyte: May I say one word today, so I
t forget it tomorrow. I felt rather badly when
ourt made the observation a moment ago I
about the courtroom and until the final ar-
ent I never stood at the appropriate place in
essing the witness.

vant the record to show that the court's bailiff

judge has a question which he says is some urgent. I will call him.

I don't mean what you are saying isn't important, but when a judge says it is urgent, I will respect him. (Short recess taken.)

The Court: The last comment I had was that was too easy on them.

Mr. Whyte: The first day of the hearing call I did overlook the instructions on the courtroom table with reference to standing at a particular place when addressing the witness. [659]

The second day of the hearing the court's bench came to me and called my attention to the bench whereupon for the rest of the hearing I stood distinctly I stood at the end of the jury box, which was one of the few places he pointed out to me as being a proper place to stand.

The Court: Well, I am sorry then, Mr. Whyte. I remembered your misfeasance and forgot to require compliance. I simply mentioned it to indicate that at the very beginning, when the man should have taken his oath and been bonded, after having been appointed upon a written order, he went forth and acted lawfully and at the very conclusion the attorney was not standing by the courtroom rules, both of which acts I attributed to a lack of your usual diligence. I know you are generally pretty sharp about these things.

. Whyte: One other comment I should like make——

. Enright: I would like to make a comment.

e Court: You can make all the comments you to.

. Enright: I prefer to proceed then.

e Court: Let me go in the courtroom for a few tes and I will excuse the people until 11:00, hen we will proceed. (Short recess taken.)

e Court: You take as much time as is reason- necessary [660] to present your position.

. Whyte: Could I correct one statement on record before Mr. Enright begins, if I may?

e Court: Surely.

. Whyte: This is the first time that I have ved the intimation that I am to blame for llegal dereliction of duty of Receiver in con- on with the Smog Control citation.

e court will recollect the testimony that Mr. berg submitted the contracts made by Mr. man with the smog installation people to me e day before Christmas.

took them home with me and advised him ly after Christmas that he was bound by the acts and to go ahead and perform them.

. Hallberg testified that on or about the 2nd nuary he instructed his bookkeeper to mail the s and specifications to Oxyaire, which was I the name of the installation corporation

tice was never called to my attention, as Mr. Hallberg himself testified in court.

I knew nothing whatever about the impending danger of the County Smog Control authorities cracking down until the 29th or 30th of January when the formal citation was received. [661] This was the first information related to me by Mr. Hallberg that he was in danger of being cited by the county or city authorities. The warning notice was never referred to me, and I had advised the Receiver in December that he was bound by his contracts and to go ahead and perform. That is all I had to say, your Honor. [662] * * * * *

The Court: The court told him—that is on the conferences I think specified in the petition—that it felt it would be better to make quarterly reports.

At that time I was in full expectation of an appeal from the principal judgment, and in the interest of economy and considering the simplicity of the administration of those apartment houses, I thought that quarterly report would be adequate. The Rules contemplate there may be exceptions; at least, the court thought they did. Some of the other judges, who had experience in these matters far beyond mine, think they do. [663]

So if there is fault there it is the fault of the court. It is not the fault of either Mr. Hallberg or Mr. Whyte, that there wasn't an accounting at

g a bill, due on the 1st, do you? Don't you
times pay your bills a day or two ahead of
?

r. Enright: Ordinarily sometimes, yes; noth-
unusual about that. This was different, your
or. Here an order was made on the 26th.

e Court: What was the order on the 26th?

r. Enright: That the Receiver discontinue his
e management and only collect the moneys up
e 28th and retain the money in the bank and
cash under his control.

e Court: Of course, there might be many
derations there. A receiver administering a
erty on which there is a deed of trust, which
amortized over a period of time, about to sur-
er it to a new owner, not a person who didn't
any prior interest, but a person who is assum-
the [669] duty of management, control of it
he first time, might feel that it would be an
f prudence to put it in condition so that the
on could have a little time to orient themselves
e ownership and its obligations before the pay-
commenced to fall due. He was only giving
33 days. It was a type of thing the court could,
s I committed error in the memorandum,
h also contains this attorney's fee fixing, that
court could adjust that by requiring that the
on for whose benefit it was paid bear the bur-

pediency of the legalities and equities which were susceptible of adjustment and were adjusted by the court in very little time. I could conceive of some one in almost every one of the big law firms in Los Angeles advising a receiver, under those circumstances, to pay that money. [670] * * * * *

The Court: You think it is a little low?

Mr. Camusi: I would say this: If he has put this number of hours and if it all was devoted to matters that are clearly within the scope of his duties as attorney for the Receiver, I would have said it was low or I would be dishonest about it. * * * * * [680]

Mr. Camusi: I would like to make one more comment for the record. It always seems that at any time anything comes up, why, the plaintiff and defendant attorneys are not in agreement, although it involves a third party.

I don't know Mr. Whyte personally and I am not making statements which are obviously contrary to Mr. Enright's ideas because I want to be contrary to Mr. Enright, because I don't. I wish I could be more in agreement with them at this time but I just feel that we came into court and asked for a receiver. It was very important to our position.

We asked for a receiver. He has to have an attorney, and if we are going to not be fair at this stage of the game, when it comes to fixing a fee

think we are very satisfied with the final result
our case and now we have gotten what we want
figured what we got we were entitled to—I
k we would be less than fair if I came in here
his stage of the game and said I thought the
were reasonable, when I thought they were not.

Endorsed]: Filed March 1, 1955.

le of District Court and Cause.]

DEPOSITION OF ROY E. HALLBERG

en at Los Angeles, California, April 22, 1954,
re Kathryn A. Kirby, Notary Public.

* * *

ROY E. HALLBERG

ng been first duly sworn, deposed and testified
ollows:

Direct Examination

Mr. Enright:

. Mr. Hallberg, you have not designated in the
tion filed in your behalf the amount of fees
seek for your services as receiver?

. That is correct.

. Have you determined in your own mind what
pensation, that is, the amount of dollars, you
ld desire to receive?

. No. I have left that up to the court.

(Deposition of Roy E. Hallberg.)

Q. What is your business address?

A. The same address.

Q. Do you use any other address for business purposes or——

A. Not now.

Q. ——otherwise?

Mr. Enright: What answer do you have, Mr. Reporter? [3*]

(The answer was read by the reporter.)

Mr. Enright: Q. Have you had a business address at some time in the past? A. Oh, yes.

Q. Would you state what the business address was?

A. Well, I had—do you remember the one on Foothill Boulevard?

Mrs. Hallberg: I think it's 18 something.

The Witness: I think it was 1835 Foothill Boulevard. I think that's what it was.

Mr. Whyte: Speak up just a little bit, please, Roy.

The Witness: Yes.

Mr. Enright: Q. When did you have that address at 1835, or approximately 1835 Colorado Pasadena?

A. Oh, about two years ago. I have most of my business correspondence directed to my home, wherever I have lived.

Q. What was the nature of the business conducted at this address on Colorado?

osition of Roy E. Hallberg.)

That was Morgan Construction Tooth Com-

Morgan Construction Tooth Company?

Yes.

How long did you engage yourself at that
ess for the Morgan Construction Tooth Com-

? A. Oh, about six months. * * * * * [4]

. Enright: Q. What was the nature of that
ess?

Construction equipment. That was a manu-
ring company.

What did the company manufacture?

Replacement parts for construction equip-

What parts?

It was the tooth, if you are familiar with
y earth moving equipment.

I am quite familiar with it. A. Yes.

Will you explain in what respect did this
any manufacture parts for heavy earth mov-
equipment?

Well, they manufactured replaceable teeth.

To be replaced on boom shovels, for example?

On power shovels, rippers, things like that.

What was your association or status with
company? A. I was vice-president.

(Deposition of Roy E. Hallberg.)

Q. What was the year? You have stated approximately two years ago.

A. Do you happen to know? [5]

Mrs. Hallberg: Maybe Mr. Whyte could you with that.

Mr. Whyte: Can you tell us approximately Hallberg?

The Witness: Well, I am trying to think. It in 1951.

The Witness: '51. Are you looking for a chronological employment record, or something like that?

Mr. Enright: Q. Yes, that would be appreciated. If you want to state that, I'd appreciate it.
* * * * * [6]

Mr. Enright: Q. Would you state your employment record during the past 10 years, Mr. Hallberg.
A. The past 10 years?

Q. Yes, approximately.

A. All right. The Garrett Company, Brooklyn, New York.

Q. From——

A. Well, I was with them for 13 years, I believe.

Q. When did you leave them?

A. Left them as of January 1, 1947.

Mr. Enright: Q. Yes, sir.

A. And came out here.

Mrs. Hallberg: He would like to know average earnings there.

position of Roy E. Hallberg.)

About \$40,000 a year.

\$40,000 a year?

That's what I was earning when I left. [8]

Well, now, you have stated that you were
Garrett Company 13 years—— A. Yes.

——and you left Garrett Company in 1948?

Yes, I came out here for Refrigeration Cor-
poration of America.

Yes.

As Western Regional Sales Manager at \$10,-
a year, plus an override, which was based on
me. And shortly after, think I had been with
a year——

Q. Hallberg: About a year and a half or two
years.

A. Witness: That's closer to it, about two years.

Q. Enright: Q. Did you——

They ran into—they got into financial trouble
east, and they wanted——

Q. Hallberg: Company dissolved.

A. Witness: Yes, that was part of the parent
company. The parent company was Noma Electric.

Q. Enright: Q. How would you spell that?

N-o-m-a. They dissolved the company, and
assets were sold about a year later.

They dissolved which company, Refrigeration
Corporation of America?

(Deposition of Roy E. Hallberg.)

go to the hospital and I was out of circulation for a bit of the time.

Q. Yes. Well, now, just to space it here a little bit, the year and a half to two years with Refrigeration Corporation of America, that would commence early in 1948, is that right?

A. It commenced in January, 1947.

Q. And terminated—— A. In October, 1948.

Q. ——in what year? A. October, 1948.

Q. About 1950? Then you had difficulty on your back? A. That's right.

Mrs. Hallberg: You were still tied up, weren't you?

The Witness: Well, yes, I have still got a tie there with the company that I have an interest in Warrenton, Missouri. I was doing some special work for them?

Mr. Enright: Q. When was it? What's the name?

A. That was right immediately following the war.

Q. Following what, Mr. Hallberg?

Mrs. Hallberg: October, 1948.

The Witness: October, 1948. [10]

Mr. Enright: Q. Miss Cosgrove or Mrs. Hallberg stated November, 1950. Is that right?

Mrs. Hallberg: No, October, 1948.

Mr. Enright: Q. What is the name?

A. Binkley Manufacturing Company, Warrenton,

Missouri.

position of Roy E. Hallberg.)

Oh, yes. Yes. Let's put it this way: I have interest in the company.

That is a corporation, I take it?

It's a corporation.

In what state? A. Missouri.

Missouri corporation? A. Yes.

I assume that that's part time?

I have done special work for Binkley from to time, yes.

Then after the Binkley Manufacturing Company, next is the Morgan Construction Tooth?

That's right.

You previously stated, I believe, it was about months with Morgan Construction Tooth?

Yes.

That is what year? [11]

In 1951, last half.

rs. Hallberg: '1, I think, isn't it?

ne Witness: 1951, I am quite sure.

r. Enright: Q. 1952? A. No.

And Mrs. Hallberg thought possibly 1951?

What employment have you had since Morgan Construction Tooth in 1951 and 1952?

Oh, I did some special work for Narmco.

How do you spell that? A. N-a-r-m-c-o.

N-a-r-m-c-o, yes.

(Deposition of Roy E. Hallberg.)

A. No, just special assignments I was doing them.

Q. For whom?

A. I said these companies, like Narmco.

Q. How long were you employed by Narmco?

A. About a year, I think.

Q. What year would that be?

Mrs. Hallberg: September of '52 to October

The Witness: September—thank you. [12]

Mr. Enright: Q. September '52 to October

A. '53, yes. * * * * * [13]

Mr. Enright: Q. But you are one-fourth owner of the Morgan Construction? [18]

A. That's right.

Q. Now, you stated you were general manager, is that correct, of Morgan Construction?

A. That is right.

Q. What did your duties consist of, as general manager?

A. Oh, all the office procedure, running salesmen, doing some sales work, and lining up production.

Q. Now, under office procedure, would that include keeping the books?

A. I helped on that, yes.

Q. Will you explain what you mean by "helped on it"?

position of Roy E. Hallberg.)

That would be making the entries of expenditures of money and—— A. Oh, yes.

How about receipts of money, would you enter them? A. That's right. * * * * * [19]

r. Enright: Q. What has been your connection with the Binkley Manufacturing Company?

I am a stockholder in it.

Over what period of time?

Oh, since 1936, I believe.

Other than being a stockholder, have you been an employee on a full time basis at any time?

Since October, 1948, and after August, 1949 I was president of the subsidiary known as Hall Industries.

That is a corporation?

It is a corporation, yes.

In what state is it a corporation?

Missouri.

Well now, I assume from what you said that you were an employee of the Hall Industries but not an employee of Binkley Manufacturing Company; you are only a stockholder?

That is correct, after the subsidiary was formed.

Yes.

Hall Industries was a sales organization for

(Deposition of Roy E. Hallberg.)

Q. Now, which products did Hall Industries for Binkley Manufacturing Company?

A. Traverse track and other products.

Q. Traverse track curtain rods. Any other that they made?

A. Well, that was the main product at that

Q. I am not informed at all on curtain Would you mind telling me, are they for residence or for income property—

A. Residential—— [23]

Q. ——Or what?

A. Residential, income property, apartm homes, everything, every place where they wa decorate and to curtain a window so that the tains can be drawn away from the windows.

Q. Now, such rods are not sold direct to residents, are they? How are they marketed, or did Hall Industries market these rods?

A. They were marketed through distributor up in various parts of the country from coa coast.

Q. Oh, and Hall Industries has set up these tributors, is that it? A. That is correct.

Q. Now, where is the place of business of Hall Industries?

A. Warrenton, Missouri.

Q. That's a corporation?

A. That's right.

position of Roy E. Hallberg.)

Very, very small. Binkley is the major injury.

What was your rate of compensation as an employee of Hall Industries?

I think I was working there at the rate of \$100 per month—

Q. Hallberg: Before income tax, about \$20,000 a year [24] on that.

A. The Witness: Yes, that's what I was going to say, about \$20,000 a year.

Q. Enright: Q. Over, or during what years?

A. October, 1948 to April, 1951.

* * * [25]

Q. Now, do you have any particular office hours during the week as an employee of the County of Orange? A. No.

Q. Are you required to report at any time on any day of any week? A. No.

Q. Will you state how many days during the month of December you worked for the County of Orange; that is, December 1953?

A. Whyte: Objected to as having already been asked and answered. The witness testified very few.

Q. Enright: Q. Do you have a desk as an employee of the County of Orange? A. No.

Q. Do you have a telephone extension number?

* * * * * [26]

(Deposition of Roy E. Hallberg.)
in Southern California during the last two or three
years?

A. A 16-unit furnished apartment building
South Pasadena.

Q. Would you give us the address?

A. It's 1509 South Fair Oaks.

Mrs. Hallberg: That's South Pasadena. [38]

The Witness: And that's South Pasadena.

Mr. Enright: Q. Any other apartment building
or——

A. Yes, I have one at 507 South El Molino.

Mr. Whyte: Is that Pasadena, Mr. Hallberg?

The Witness: That is Pasadena.

Mr. Enright: Q. Any others?

A. Only our own buildings up there.

Q. Where are they?

A. Well, those are homes.

Q. What addresses?

A. 85 Glen Summer, 90 Glen Summer; and
both of them ourselves.

Q. You mean those are new residences that
you built? A. Yes, that's right.

Q. Any other real property that you have
experience with or managed or were in any way
connected with in Southern California?

Mrs. Hallberg: 1202; 218 Fernleaf; 218 Fern-
leaf, and 1202 Seaview.

The Witness: Well, 1202 Seaview was the——

osition of Roy E. Hallberg.)

ifferent parcels of real property. Any others?

Yes. In California, no. Oh, there is 218 Fern-
That's a house I built and sold. [39]

. Whyte: In what city, Mr. Hallberg?

e Witness: Corona Del Mar.

. Enright: Q. Now, have you participated
y manner in the management or operation of
real properties or improvements upon real
erties other than these six that you enumerated

A. In California?

Yes. A. No.

Had you had any experience with any other
properties other than these six that you have
erated here in California?

No, not in California.

Have you had experience with real property
y other State? A. Yes.

What real property?

In New York.

What addresses?

e Witness: 10 Rock Ridge Road, that's what

. Enright: Q. Spell that, please.

R-o-c-k R-i-d-g-e R-o-a-d. [40]

What city?

Larchmont, New York.

Any others?

(Deposition of Roy E. Hallberg.)

Mr. Enright: Q. Any others?

A. Yes. There are quite a few others that managed during a period of receiverships coming out of the insolvency of the Citizen's State Bank in Chicago—yes, in Chicago—which was located on Lincoln Avenue near Belmont.

Q. That is the bank was located that way?

A. Yes.

Q. When was it this receivership occurred?

A. That went into receivership, oh, during 1931 I believe, or '31 to '32. You are asking me to go back a long way now.

Q. For what duration of time were you connected with that receivership?

A. About a year, or more.

Q. In what capacity?

A. I was managing the buildings there.

Q. How many buildings?

A. Oh, some 40 or 50. [41]

Q. Were they different types of buildings?

A. All different types, from residences up to large apartment buildings.

Q. What would you define as a large apartment building?

A. Well, there's one hotel apartment there had about 60 apartments in it.

Q. What is the name of the hotel?

A. Oh,

position of Roy E. Hallberg.)
buildings, depending upon the nature of the build-

Well, I will hold my question to unit-wise.
is it the largest?

In units, yes, I think.

Was this 60 unit hotel?

Yes. That was apartment hotel.

Apartment hotel? A. Yes.

What is the name of that?

I can't give you the name of it.

The location?

Location is on North Oakley right near Logan
are.

Were you the receiver for this Citizen's State
bank? [42] A. No.

Were you an employee of the receiver?

No, not of that.

Well, who employed you to——

It was a trust that was set up by the sale of
dairy, the Eich Dairy, and Mr. Gus Eich had his
money from that trust invested in these real estate
properties, and upon default we took over the manage-
ment of these various properties.

Who is "we"?

I was working with Mr. Eich.

I see. Well, then, who was the receiver?

(Deposition of Roy E. Hallberg.)

Q. Will you explain further what you mean the word "we"?

A. Well, Mr. Eich, who was still in the da business, was made receiver on several of the buildings. Now, I at the time had been working for Walter Larsen, a real estate operator, and acquainted with Mr. Eich through one of his buildings, which we took over to manage; that is, Walter Larsen did, and I was running the building for him, and I got acquainted with Mr. Eich that way, and when these buildings came in, we set up our own operation of these various buildings. I was directly in charge of all of them. [43]

Q. How many in number now that Eich had?

A. It was about 40 or 50 buildings. I can't give the exact number.

Q. And the largest was this 60 unit apartment so far as——

A. That's right. It may have been larger, I don't recall.

Q. ——units are concerned? A. Yes.

Q. The other were industrial to residential all various different types?

A. There weren't any industrial. It was all residential, either in apartments or apartment hotels or individual residences.

Q. You were employed there a period of a year? A. Approximately, yes.

position of Roy E. Hallberg.)

Did you receive a degree?

Yes, Bachelor of Science in Commerce.

Bachelor of Science in Commerce. What
? A. 1927. * * * * * [45]

r. Enright: Q. Oh, you moved from New York
etly to this 90 Glen Summer? [48]

Pretty close, yes. That covers it pretty well,
the intervening period there of a couple months
re we decided to move in there. We had—it
s time to build a house. That was a brand new
e we built.

That's 90 Glen Summer Road?

90 Glen Summer Road.

Now, you gave me an address of eighty——
85 Glen Summer Road.

Was that another——

. That is another house we built. Actually, the
Glen Summer Road is where we moved first. We
ed—built the house across the street then, and
ed across the street.

. What do you mean by "across the street"?
was across the street from 85? A. Yes.

. So you built a house at 85 Glen Summer
d when coming from New York——

. That is correct.

. ——and then having completed building it,
a you started building another house across the

(Deposition of Roy E. Hallberg.)

Q. Both were residences? [49]

A. Correct.

Q. Then where did you move to?

A. Moved to 1202 Seaview, Corona Del Mar.

Q. That is a residence?

A. No, that's three apartments there.

Q. Three apartments? A. Yes.

Q. Did you build that new? A. Yes.

Q. Now, when did you move there?

A. About a year and a half ago.

Q. Two apartments, I take it, are rented?

A. Yes.

Q. So you are engaging in the rental of the properties—— A. That's right.

Q. ——at Seaview, two additional apartments?

A. (The witness nods his head up and down.)

Q. Now, what's this 218 Fernleaf? Is that a new property, or—— A. That is.

Q. ——property you built?

A. I built it.

Q. When did you build that?

A. Oh, during the last summer.

Q. Can you state approximately when it was completed [50] with reference to your taking on your duties as receiver?

A. That was completed before.

Q. How long before?

Mrs. Hallberg: It was finished in September.

osition of Roy E. Hallberg.)

The first property you referred to was Pasa-
apartment building at 1509 South Fair Oaks?

Yes, South Pasadena.

First, what is the name of the apartment
e?

I don't know what it is now. They have
ged it.

s. Hallberg: I think it's still the Mira Monte.

e Witness: Mira Monte.

s. Hallberg: That's what it was then.

r. Enright: Q. When did you acquire that?

, I will put it this way: How long did you
ate that apartment property?

About a year.

s. Hallberg: Oh, a year and a quarter, about.

e Witness: About a year and a quarter.

r. Enright: Q. Did you personally operate it?

Definitely.

How many apartments were there in it?

s. Hallberg: 16. [51]

e Witness: 16 on that one.

r. Enright: Q. How many were——

s. Hallberg: Furnished.

e Witness: All furnished.

r. Enright: Q. What year was it that you
ated, or year and a quarter, that you operated?

s. Hallberg: End of '49.

(Deposition of Roy E. Hallberg.)

Q. Who is included in "we"?

A. Well, when I wasn't there——

Mrs. Hallberg: There was a manager.

The Witness: Well, I was talking about the actual work over there. We had a manager living there who collected the rents and notified us of various things that were necessary which we care of, ourselves.

Mr. Enright: Q. You were then living on Glen Summer Road, yourselves? A. Yes.

Q. What is the name of the manager?

A. Mrs. Cosgrove.

Q. That is your mother-in-law? A. Yes.

(There was a brief interruption.) [52]

Mr. Enright: Q. I have asked you concerning 218 Greenleaf, Corona Del Mar.

A. That's Fernleaf.

Q. Fernleaf, pardon me, 1202 Seaview, 90 Glen Summer, 85 Glen Summer, and this 1509 S Fair Oaks. The only other property, real property that you owned or participated in the management of, or were in any manner connected with, was South El Molino? That is Southern California property?

A. That is Southern California property. Yes.

Q. Am I correct so far, that there is only one remaining property, that is 507 South El Molino?

A. That is the only property here in California.

osition of Roy E. Hallberg.)

Four apartments.

When did you acquire those?

s. Hallberg: I think it was January '51.

e Witness: January, '51.

. Enright: Q. Do you still——

January, '51. Yes, I still own that.

* * [53]

. Enright: Q. Now, as to this salary of \$40,-
from Garrett Company, how many years did
receive that salary?

I didn't say it was salary.

Salary and commissions or income,——

It was income.

——or compensation?

It was compensation. Oh, I guess it extended
period of three or four——about four years.

During what four years? [58]

Well, four years prior to the last, my termi-
n there.

When did you terminate your employment
? A. You got that.

In 1947? A. January 1, 1947.

e Witness: No.

. Enright: Q. Yes, what——

It was January 1, 1947.

e Witness: I am a little vague about the years

(Deposition of Roy E. Hallberg.)

Q. Now, you say you received \$40,000 over a period of three or four years, is that correct?

A. That's correct.

Q. How much of that was retained by you for your services? A. All of it.

Q. Did you pay any portion of it out to any of the salesmen or anyone working under you?

A. Well, I didn't give you the gross income from that. [59]

Q. Well, all I want—

A. I am just giving you the net income from that. I didn't pay anything out of that.

Q. And you received net income for your services in working for Garrett Company in the amount of \$40,000 for a period of three or four years?

A. Correct.

Q. —ending in 1947 or 1948?

A. Let's put it as ending January 1, 1947.
Mrs. Hallberg: End of '47.

The Witness: January 1, 1947. * * * * *

Q. Now, Mr. Hallberg, did you attend to negotiating for the changing of the insurance?

A. I did.

Q. How much time did you expend in negotiating the insurance?

A. Quite a bit of time. I contacted the pre-war broker who handled the insurance. I also contacted the Liberty Mutual.

Q. How many conferences did you have

position of Roy E. Hallberg.)

Two or three, and how many with the former
er, Mr. Dulley?

Two of them, and I think we had several
versations over the telephone.

Did you, yourself, personally, make a survey
67] the rental rates in the vicinity of the West-
Arms Apartments?

Yes. In conjunction with—Miss Cosgrove did
ral—made several investigations there, her—

Now, what did you do?

——to check that. I went in and talked to the
agers to find out what I could rent apartments
and inspected available apartments to deter-
e comparability.

And you, yourself did? A. Yes.

What apartment houses did you go to?

Over around the Oliver Cromwell.

Mrs. Hallberg: No, Western——

he Witness: Well, I was over in the next block,

Mr. Enright: Q. Now you are over at the
er Cromwell. I asked you about the Western
as.

Well, I mentioned the Oliver Cromwell.

Well, I'd like to confine you, if I may——

(Deposition of Roy E. Hallberg.)

A. Yes. I drove around that entire neighborhood and checked the various buildings there and—

Q. How many apartment houses did you check in that vicinity?

A. There are very few of them right in the vicinity [68] there. The nearest one on Western down the street about three blocks and it's a mixed building.

Q. You checked that one?

A. I checked that one.

Q. Now, what other building did you check?

A. Those are the ones right there.

Q. Those is a poor—

A. I am talking about the smaller buildings. Those are residences in the neighborhood, and I went down the street south about a block and a half and saw that big apartment building on the corner which is a mixed building.

Q. That's a mixed apartment. That's the one apartment house you checked in that vicinity, is it, of the Western Arms?

A. That's right. No. Also the building one block directly West of the Western Arms which is very comparable.

Q. Now, did you personally make a survey of the apartments in the vicinity of the Oliver Cromwell?

A. Yes, I did that.

Q. How many apartments did you personally—

position of Roy E. Hallberg.)

s of rents in the vicinity of the Canterbury, the Loma, or the third apartment house?

r. Whyte: Fountain Manor? [69]

r. Enright: Q. Fountain Manor.

Yes, I did. I checked those—some of those buildings up there and each one of them, just to get a general idea of the rentals that were being charged for apartments there.

You personally did?

I did, definitely. * * * * * [70]

r. Enright: Q. Tell me what other did you check as receiver other than the insurance and surveyor—the rental rates in the vicinity of these five apartment houses?

I worked on the accounting record to change the arrangement so that the individual buildings would show up without too much difficulty. I had the files changed around so that we could find the files whenever we wanted to. I changed the listing of the accounts payable in such a manner that they could be located per company and also when they were paid; the check numbers are right on the bills so they'd have a cross-index by numbers.

Yes.

I checked Harrison several times on his accounting. I had to help him balance the cash on

(Deposition of Roy E. Hallberg.)

carrying his totals across. I assured myself all moneys that came in were duly recorded.

Q. So far I think your enumeration here been accounting records, by listing accounts receivable, check Harrison a couple times. Now, that pertains to accounting, doesn't it? [71]

A. Most of that does, yes. I also went into various buildings and looked at the physical plant and checked the basements, type of equipment that had.

Mr. Whyte: I am going to remind the witness that he has a right to refresh his recollection whenever necessary for him to do so.

Mr. Enright: Q. Can you enumerate any other major item of service, such as accounting, insurance, surveying rent conditions and checking buildings that you rendered while receiver?

A. Definitely.

Q. That took time, your time? Could you enumerate what they were?

A. At this point it's a little difficult to enumerate every little item, thing that was done.

Q. No, I just wanted the major items, not every little item yet, Mr. Hallberg.

A. Well, let me see. Up at Fountain Manor had a problem there with a sink in the basement which required the services of a plumber and the hot water heating system was causing leaks.

osition of Roy E. Hallberg.)

Did you talk to any other plumber other than Lilly? [72]

That was the only one I talked to at the

Well, I mean during the whole period of
mber—December? A. Yes.

December through February?

Yes. I talked to a couple other plumbers, but
Lilly seemed to be a very aggressive individual
he completed his work in a workman-like man-
was very clean; he knew what he was doing.
Incidentally, Mr. Richman used him also, and
nk he worked out all right.

Any other services in a general nature that
can describe or identify, rather than describe
tail? We have got plumbing now.

I had the problem on refrigeration.

What apartment house was that?

Western Arms.

Did you go to the Western Arms?

I was over there, yes.

When? I don't mean the exact date, but I
with reference to the problem.

The problem developed, and it was one of
conditions that caused immediate action. The
gers were all notified what refrigeration to

(Deposition of Roy E. Hallberg.)

Q. Were you in Los Angeles on the day the problem arose?

A. On that particular day, I think I wasn't on the job, though. Miss Cosgrove happened to be there at the time, and——

Q. So what you know about it is what Miss Cosgrove told you?

Mr. Whyte: Had you finished your answer, Hallberg?

Would you read back the witness' answer?

(The answer was read by the reporter.)

Mr. Enright: Q. Will you state what you know about what occurred there from your own eyes, from your having seen occurrences there? Did you see anything occur there at that time, yourself?

A. Are you looking at me, or Miss——

Q. You. I am interrogating you.

A. Your eyes—your glasses have a reflection, and I can't tell whether you are looking at me or at Miss Cosgrove here. I did not.

Mrs. Hallberg: You inspected.

The Witness: I did not go over there at that time. I got over there the next day and inspected it, and we called in another heating contractor who viewed the problem there. It was after the California Refrigeration had let all the gas out of the system. [74]

position of Roy E. Hallberg.)

You saw all of the gas out of the system, didn't you?

Mr. Hallberg: I was there, but they didn't tell me they were taking such a drastic step. One can't get gas in or out of the system.

Mr. Enright: Just a minute, if you please. If you want to go on the record, it's all right with me, Mr. Hallberg.

Mr. Hallberg: I'd just as soon.

Mr. Enright: Did you take it down, Miss Reporter?

(The record was read by the reporter.)

Mr. Whyte: Do you want to complete that answer?

Mr. Hallberg: I would like to.

There was just one refrigeration unit out at the time, and I knew California Refrigeration had been called in. I was in the basement asking him about it and he said he was getting along fine. That was about 3:30 in the afternoon.

At 6:00 o'clock he found Mrs. Kennedy in a room's apartment having dinner, and informed her that he had let the gas out, and he later told me that he had been letting it out all afternoon.

Mr. Enright: Does that complete it?

(Mrs. Hallberg nods her head up and down.)

Mr. Enright: Q. Now, Mr. Hallberg, other than

(Deposition of Roy E. Hallberg.)

A. We had that matter of parapet at the terbury.

Q. To whom did you talk or discuss that lem with?

A. I went up there and went up to the checked the construction up there, and the apparently was in very good condition, and seeing the roof and what was recommended, de to contact the Building Department further, as a result of the contact with the Building De ment, a new recommendation was sent through the Building Department which was not quite involved as the first one was.

Their recommendation was not to interfere the parapet directly over the entrance-way and reinforce the parapet, which they suggested be which they would allow to be left, and to cut the balance of the parapet.

Q. Do you know if—

A. Incidentally, I might mention here that I no knowledge of any question on that parapet about the middle of January when the files sent to me by Mr. Richman. I thought I had h I thought I had received all the files concerning building, as ordered by the court, but Mr. Rich sent [76] me those afterwards.

Q. So your time was expended on the par wall problem after January, about the middle

position of Roy E. Hallberg.)

any experience Miss Cosgrove had in the operation of apartments other than the real property you owned here in California?

Well, let me give you a little of her background. She is a graduate of the University of Minnesota School of Business Administration. She majored in economics, and you minored in——

Mr. Hallberg: In statistics and accounting.

The Witness: In statistics and accounting. She was in the investment field a good many years. In fact, she was one of two women investment counselors in New York.

Mr. Enright: Q. During what period of time?

Mr. Hallberg: '37 to '42.

The Witness: It was prior to '42, and in her right, she has carried through the decorating of a lot of our apartments and——

Mr. Whyte: By "our apartments," you mean the one in Pasadena that you have mentioned?

The Witness: That we own, yes.

Mr. Enright: Q. That would be the El Molino, [77] units, and the 16 units, is it, at the Fairview?
A. Yes, and in New York and——

Well, what apartments did you have in New York?

No, our own apartment in New York.

Your own apartment, your residence she decorated.

(Deposition of Roy E. Hallberg.)

believe, Mr. Hallberg, concerning Mrs. Hallberg's experience, and you stated she was a decorator on her own right. She had decorated your home in New York.

A. Pardon me, and homes out here, plus the fact that she has a broker's license.

Mr. Whyte: What kind of a broker's license?

The Witness: Real estate broker's license.

Mr. Enright: Q. In California?

A. In California.

Q. Well, from 1942 what was the nature of her employment, if any?

A. Well, she was with me, assisting me in a number of my activities.

Q. Well then, as I understand it, the rental income property that she had experience with would be the El Molino, four units—— [78]

A. Yes.

Q. ——the Fair Oaks property,—how many units was that? A. 16.

Q. And the two units, or three units you mentioned at Seaview? A. Yes.

Q. Are there any others?

A. Well, as I mentioned before, our building back in New York.

Q. That was your home, wasn't it?

A. Yes, that was our home. She did that.

position of Roy E. Hallberg.)

Did you furnish these,—that would be the
and the 90 Glen Summer?

Yes, those were not furnished.

They weren't furnished, were they?

Well, let's put it this way. When we sold the
Glen Summer Road, our furniture was in there.
It was—she had done all the decorating there
the colors and color schemes and everything.
When we sold the house, we moved across the street
we again decorated it and furnished it.

She decorated and selected the colors for the
ous rooms? [79] A. That is correct.

The same for 218 Fernleaf, is it?

218, the interior. That is not a furnished
se. That's a speculative house. I might mention
that there was enough comment about our
Seaview that we got quite a write-up in the
l paper on it. That was—because of the decorat-

She decorated the exterior too?

Well, that was harmony, colors harmonized
everything.

Now, then, her experience is that of decorat-
these residences and—— A. Yes.

——and these units, 16 units and four units
El Molino and the Fair Oaks apartments, real
te broker, and a business counselor, is that it,

(Deposition of Roy E. Hallberg.)

Mr. Enright: Q. In New York City?

A. That is correct.

Q. What company was she associated with there if you know?

Mrs. Hallberg: Johnston & Lagerquist.

Mr. Enright: Q. Do you know, Mr. Hallberg, whether [80] or not her investment counseling was confined to the management of apartment rental income properties or rental income of any kind.

A. I can't answer that.

Mrs. Hallberg: I had a couple of clients, Austin Flint and the Cox family for whom we handled properties. * * * * * [81]

Mr. Enright: Q. In other words, you checked each one of the bills before you——

A. I always requested the bill be right and with it.

Q. And you would check the bill against it before [88] you'd sign? A. Yes, sir.

Q. That was your method of checking up whether or not an improper expenditure would be made?

A. The bill was supposed to have been checked and you'd just naturally rely on somebody else to do the checking, the same as any bookkeeping office will do, or accounting office. They have to rely on some of the people they have working for them.

Q. Yes. So you relied upon Mr. Harrison to

position of Roy E. Hallberg.)

Q. When they presented the bill and the check
beside of it, why, you quickly checked them, or
what is necessary so far as checking?

A. That's right.

Q. And signed it? A. That's right.

Q. So they, themselves, that is, Harrison and
Findeisen, would do the checking up on the
expenditure that had been made for those materials
for the services that were rendered?

A. I attempted to keep a pretty close check on
these bills to see that the check covered the amount.

Q. Well, generally, didn't you do your checking
on the operation of these apartments on the week
ends, [89] Mr. Hallberg?

A. I did some of that.

Q. I mean, that was the rule, wasn't it?

A. Not necessarily.

Q. You'd come in on week ends, Saturdays and
Sundays?

A. Not necessarily. I came in during the week
on the evenings, as well as days. * * * * * [90]

Mr. Whyte: I note that my time slip for Feb-
ruary 25 contains the following notation: "Tele-
phone call from Camusi re termination of receiver-
ship by settlement between [95] Richman and Mrs.
Tidwell. Telephone call to Hallberg reporting on
development and asking him to be present at

(Deposition of Roy E. Hallberg.)

having received that phone call from Mr. W
Mr. Hallberg?

A. Not as to the termination. It seems to
was Friday night that we received the call.

Q. Where were you on Friday, or Thursday
that week, if you know?

A. I couldn't tell you now.

Q. But you did receive the telephone call e
Thursday or Friday from Mr. Whyte?

A. Friday, some time Friday evening, I'm
sure, but I am not positive of the exact time.

Q. At that time did Mr. Whyte inform yo
to the results of the conference in Judge T
chambers? A. Yes.

Q. Did he advise you of the stipulation in
court order that had been made that day?

A. I think, as I recall the conversation, it
summed up in the fact that he stated that rece
ship had been terminated and we were to ac
cordingly, and it was going to be taken over by
Camusi and his client.

Q. You did not collect the rents during tha
riod [96] Saturday, Sunday, and——

A. Well, there is a good reason for not co
ing rents on Saturday, for the simple re
that——

Q. I appreciate that, Mr. Hallberg. I just

position of Roy E. Hallberg.)

e Witness: Friday was the last time we collected rents. * * * * * [97]

Now, what I am driving at is this, Mr. Hallberg: It's clear that you were up at the office in Oliver Cromwell on the 27th or the 28th. At that's the date of the checks; that's what I am going by. That's a Saturday and a Sunday, is that right, Mr. Hallberg?

Mr. Hallberg: Those were post-dated.

e Witness: Those were post-dated checks, I understand.

Mr. Enright: Q. Well, you signed the checks after receiving this telephone message from Mr. Hallberg, is that right? [98]

No, no. No, those were signed before, and as understood from the court, that any payments that were due were to be made; any bills incurred were to be paid.

Where were you when you obtained that understanding?

Mr. Whyte got that information—no, we got it in our call to Judge Tolin.

Mr. Whyte: Judge Tolin.

e Witness: Judge Tolin, and he instructed me to pay the bills that I had incurred——

Mr. Enright: Q. When was that?

——had been incurred. I didn't hear what

(Deposition of Roy E. Hallberg.)

Q. That would be February 28? A. Yes.

Q. Did you talk to Judge Tolin at that time?

A. I did, and—Mr. Whyte who was at my house then talked to him.

Q. What were your instructions on February 28 concerning these—

A. Mr. Whyte got the instructions.

Q. What were you told to do by Judge Tolin?

A. To keep the moneys and to pay the bills that had been incurred during the month—during receivership. * * * * * [99]

Q. Well now, the \$2,000 plus on the Oliver Company well wasn't payable till March 1st. You knew that, didn't you?

Mr. Whyte: Are you speaking about the payment on the trust deed now, Mr. Enright?

Mr. Enright: Yes, precisely. I'd like to know where we are going to come out on that \$2,000. I don't know why this man paid it out.

The Witness: You don't?

Mr. Enright: Q. No.

A. It's very simple. First of all, the interest was included in that was for the month—that is, the interest that was due, and that's due from the month preceding, and—

Mr. Whyte: Which month do you mean by "the month [102] preceding"?

The Witness: Well, the date—

position of Roy E. Hallberg.)

ment for the balance which was to be paid on 1st of March, if I remember correctly; and I had to get those in in time. It's normal process to get your checks in on time, especially when it comes to something like that. * * * * * [103]

Mr. Enright: Q. But you do think, your best recollection is that those instructions were given at the time these particular checks, including this Cromwell check for \$2,000—

No, that was sent out—made up in the normal course of business, that \$2,000 check was.

And mailed out before the 28th?

Why, naturally.

Oh, naturally it was?

Why, of course. Supposed to be in there, in the office, on the 1st.

I see. Well it's dated the 27th here. It wasn't mailed before the 27th, was it?

It could have—it could have been the 27th [104] the 28th, the 27th it was mailed out, but pretty hard to—

Well now, really, Mr. Hallberg, will you step over here and examine these stubs here. You didn't cash these checks out before the dates they bear on here, the series of check starting with the number 425 and the 28th and the payroll checks that go on after that?

(Deposition of Roy E. Hallberg.)

The dates you make out your check, you may have sent it out that same day. * * * * * [105]

Mr. Enright: Q. Well, here you have a memorandum that may throw some light on this. Under your item—pardon me just a moment—page 7, it reads as follows: “On Friday, February 25—

A. Yes.

Q. —the reports of the three apartments, Oliver Cromwell, the Fountain Manor, and the Loma, were checked out.” A. Yes.

Q. “The Western Arms and the Canterbury managers reported that they had so much outstanding they would prefer to make the collections on the week end. It is not good business to make collections when the banks are closed. The apartment houses had safes for safekeeping the receipts, whereas the receiver’s office had none. The receiver was advised by his attorney to act in no capacity until the morning of March 1st, Monday, and consequently the March 1st funds on hand could not be picked up. The receiver’s report mentioned this only in relation to the total receipts for February, not being complete for comparative purposes.”

Now, is that the reason, as stated here, why you did not pick up the moneys from the two apartments on March 1st? [106] A. That’s right.

Q. I see, so it was upon advice of your attorney.

A. That’s right. * * * * * [107]

position of Roy E. Hallberg.)

Question by Mr. Enright that you had owned apartment [115] building in South Pasadena consisting of 16 units and an apartment building on South El Molino in Pasadena consisting of four units, is that correct? A. Correct.

What work, if any, did you or Mrs. Hallberg have in connection with those apartments?

You speak of work. You mean physical labor?

Physical labor, management, decorating, painting—any type of work.

Well, that 1509 required complete renovation. We ripped up the carpets; we hung new doors in the garages; we repaired the roof; we repainted the hallways; we redid the apartments. We put in generators. We put in new stoves.

By "we" you mean yourself and Mrs. Hallberg?
A. That's right.

Go on.

Painted a lot of the apartments.

Mrs. Hallberg: All of them.

The Witness: Or painted all of the apartments, but by "painting" I got in and wielded a brush and laid floors. I did that.

Mr. Whyte: Q. What did you do in connection with the South El Molino property in Pasadena?

Well, we did practically the same thing there.

Mrs. Hallberg: Took the porches off. [116]

(Deposition of Roy E. Hallberg.)

A. Well, I—while going to school, I did public accounting work for an accountant in Chicago, J. L. Malby, and I did that part time.

Q. Did you take any accounting courses during your tenure at Northwestern University?

A. Naturally. Took two years of accounting.

Q. In connection with your duties surrounding this receivership, what if anything did you do in reference to the preparation for tax returns that were filed?

A. Which tax returns are you referring to?

Q. I am referring to the tax returns which were filed on or before March 15 of 1954.

A. Well, we filed a fiduciary return.

Q. What did you do in connection with that return?

A. Well, had to take the figures for the year and combine them with the last month in order to make a complete return for the year.

Q. In connection with the preparation of that return, did you interview any employees of the Director of Internal Revenue?

Mrs. Hallberg: Yes.

The Witness: Yes, we contacted them, because of some [117] questions that we had about the filing of the return.

Mr. Whyte: Q. Again in connection with your active duties of management of the properties

osition of Roy E. Hallberg.)

e apartment, or the exterior condition of the
ment building?

Well, after a heavy rainstorm we got quite
of rain in through the side, one side of the
ing, and water was coming in where the caulking
ad been giving away.

Go on.

There was quite a few apartments that had
e running down the walls and it spoiled some
e decoration there. Water also came in around
window panes where the putty was giving way.

Anything further that you did toward in-
ing or assessing, assaying that condition?

Well, at the moment it's pretty—can't recall
more on that other than calling in several con-
ors to give us bids on repair.

Is that all, Mr. Hallberg, that you recall at
ime? A. Yes.

. Whyte: I have no further questions. [118]

Redirect Examination

Mr. Enright:

Mr. Hallberg, since doing part time account-
while attending Northwestern, you have not
ered services as an accountant to anyone, have

A. Not as a public accountant.

No, or any other accounting?

(Deposition of Roy E. Hallberg.)

Q. Accounting at Morgan Construction To

A. Yes.

Q. Now that would be the only other account until you reached this Richman trust matter?

A. That's right, except that in every administrative job one deals with accounting records.

Q. In December?

A. Of course, I had to keep my own record of the various apartments, our own buildings. I had those. * * * * * [119]

Q. Well, didn't you discuss these operating expenses with your attorney or Judge Tolin——

A. Oh, yes.

Q. ——or Mr. Camusi, or Mr. Yudall before they made out those checks or signed those checks on March 7? A. Yes.

Q. Well, now which one of the persons did you discuss it with?

A. I discussed that with Mr. Whyte.

Q. When, with reference to the time the checks were made out on March 7th?

A. Well, prior to the checks, I can't tell you an exact date.

Q. That was during that first week after you were relieved as——

A. Yes, that's right.

Q. ——as active receiver—— [123]

position of Roy E. Hallberg.)

Did Mr. Whyte at that time tell you that Camusi wanted the bills paid?

I don't recall any such statement other than such as those bills were incurred under my direction of the buildings, they were more or less responsibilities to have them paid.

Well, who told you that?

Mr. Whyte.

When did he tell you that?

Oh, in our discussions there right after the partnership ended.

Was that before you talked to Judge Tolin the Sunday evening after playing golf?

Yes, I think that was—it was confirmed by Judge Tolin.

What do you mean by the use of the word "confirmed;" is that what he told you?

That's ostensibly the same thing in the connection with Judge Tolin, and which Mr. Whyte learned from him that night.

Mr. Whyte didn't tell you what I said or I told him, that the bills should not be paid; that the purchaser was going to pay the bills after February 28th? [124]

Yes, he mentioned your having a different opinion. * * * * *

Enright: Q. Now, Mr. Hallberg, you have

(Deposition of Roy E. Hallberg.)

your attention to the day of November 30, my question is: When was that entry written, on the day after that date?

A. Oh, I think this was written about a day or two later. [125]

Q. I see. Now, directing your attention to the notations appearing after December 1st, when was that written?

A. The same time, and some of the——

Q. You haven't answered my question. Well, go ahead and explain if you want to.

A. Yes, I was going to say that those are written at night after I got home, and I got the reports from Mrs. Hallberg, and they are, speaking of the notes throughout that book,—some of the information and data was taken from notes I had on the backs of envelopes and activities that happened during the day that Miss Hallberg had, Mrs. Hallberg, and more or less compiled to get a general idea of what happened and transpired during that time.

Now, they, for the most part—those were written up almost every evening. Once in a while I did pick them up the next day or two days later.

Q. So, if I understand this correctly, for the most part the notations here that are entered in this book on these various different dates commencing November 30 and ending, I believe, February 23, are those that were written up by you?

osition of Roy E. Hallberg.)

ose respective days were made in this book in evening at your home, is that right? [126]

That's right.

Yes, and they would be made after you had ved a report from Mrs. Hallberg, is that right?

A good many of them would be. A lot of entries in there are as a result of my activity.

Yes.

But they were for the most part compiled arriving home.

Yes, after who would arrive home, you would e home, or Mrs. Hallberg?

Either myself and Mrs. Hallberg.

In many instances you and Mrs. Hallberg d not be together during the day?

That is correct.

And Mrs. Hallberg would be in Los Angeles ding to the problems relating to these different ment houses? A. Quite often.

And in the evening when she would arrive at , why, she would tell you what had occurred?

As for—we discussed the problems she had ntered during her visits to the various build- and we'd decide—we made a lot of decisions ght as to what to do.

Now, the procedure was——

(Deposition of Roy E. Hallberg.)

Richman's, but I certainly had somebody with who knew——

Mr. Whyte: I think you have answered question.

The Witness: All right, thank you.

Mr. Enright: Q. So, for the most part, it would be Mrs. Hallberg that would go around to the houses and ascertain what the problem was, make the decision as to how the house should be kept, and then she'd report it to you in the evening, is that right?

A. Partially correct—I made decisions and controlled the property involved when important problems were involved.

Q. Well, that's usually what occurred, isn't it?

A. No. I can't say it's usually.

Q. Now, during the day, usually you'd go to Santa Ana, isn't that right; that would be most of the days?

A. Some days; some days I wouldn't be in Santa Ana. You notice—in fact, I met you in town during the week, so I did come in quite often during the week.

Q. Yes, you met me in town once at the Board. A. That's right.

Q. And at the time of the hearing on the application for the Renovation, is that correct?

A. That's correct.

position of Roy E. Hallberg.)

You did come in to town the day we met
at the City Prosecutor's Office?

That's right.

And you did come in to town the day you
filed on the Renovation Petition?

That is correct.

Well, other than those two days, did you
come in during the week that you can remember

A. Quite often.

Now, these notations that you have written
here reflect your thinking and knowledge at
the time that the events occurred, isn't that right?
That's not clear, I——

That's, I'd say fairly accurate, yes.

Well, these notes were your best——

To the best of my——

To the best of your ability, you wrote down
the problem was and what you had done dur-
ing that particular day?

That is correct, uh-huh.

So if we were to study these notes between
the time and the time of hearing, we could review and
obtain the problems that you were confronted
during your term as receiver?

Not all the problems. [129]

Well, what problems didn't you write down
that you can recollect now?

(Deposition of Roy E. Hallberg.)

tracted with for services that aren't reflected there.

Q. But those would be minor things. Any major item, or any major problem——

A. For the most part, the major things entered. * * * * * [130]

Mr. Enright: Q. Now, Mr. Hallberg, you reflect, do you, verifying the Petition for Authority to Renovate [131] the various apartments?

A. Yes.

Q. You remember testifying in support of that petition, do you? A. Yes.

Q. Did you personally interview the manager concerning the vacancies that you testified concerning on the hearing of that Petition to Renovate? did you obtain that information from Mrs. Hallberg?

A. Some of that information I obtained directly and some through Mrs. Hallberg.

Q. Has Mrs. Hallberg been paid by you for her services in assisting you in this receivership?

A. Did you hear that question?

Mr. Whyte: Yes, I heard the question. I think you can answer it.

The Witness: Why, no.

Mr. Enright: Q. Have you made some arrangement with her for her services? A. No.

Q. None whatsoever?

sition of Roy E. Hallberg.)

No, I did not.

(There was a brief interruption.) [132]

Enright: Q. Well, Mr. Hallberg, was it intention when you became receiver here to delegate the routine matters to your wife, Mrs. Hallberg?

Well, inasmuch as she is a qualified and licensed broker, is quite familiar with all the details concerning an apartment building, I certainly expected to use some of her services and abilities.

* * [133]

Now, directing your attention to the \$40,000 per year that you state you received for three or four years while employed by the Garrett Company in New York, did that company pay you that salary itself, or did you receive a portion of that salary as commissions from third [137] persons?

That was from Garrett & Company itself.

Your principal activity in representing Garrett & Company was in the marketing of its wines through wholesalers or retailers, isn't that right?

Correct.

And the principal marketing was carried on in New York City or Brooklyn, if that is a part of New York, metropolitan New York?

I think I stated previously that I controlled the entire State of New York. * * * * * [138]

[Title of District Court and Cause.]

DEPOSITION OF JOHN WHYTE

Taken at Los Angeles, California, April 22,
before Kathryn A. Kirby, Notary Public.

JOHN WHYTE

having been first duly sworn, deposed and testified
as follows:

Direct Examination

By Mr. Enright:

Q. Mr. Whyte, your petition for attorney's fees
enumerates the dates on which you made telephone
calls, is that correct?

A. If I may be permitted to examine the
petition—

Q. Well, I will aid you. Page 3, line 26
made a telephone call to Mr. Camusi concerning
the receivership development.

A. That's right.

Q. Now, noting the wording, as for example,
only, Mr. Whyte, of that occurrence on December
2nd, that recitation on page 3, line 26 in your
petition for Fees is substantially taken from your
time sheet for that day of December 2nd?

A. I believe so. If you will permit me, I
examine my daily time sheet.

Q. That I want you to do.

A. My daily time sheet for December 2nd,

position of John Whyte.)

Yes. Now, bearing in mind that time sheet [of] yours of December 2nd and also examining petition there, are you quite sure that in substance your petition, so far as time expended is concerned, is a recitation of your time sheets?

This petition was prepared so far as the nature of the services performed and the amount of time expended, from the daily time sheets kept regularly as part of the office procedure in my office.

The dates of telephone calls and the substance of the telephone calls reflected in your petition as a reproduction of your daily time sheets, is that right?

It may not be an exact reproduction, but it is based upon the daily time sheets.

Your petition reflects the substance of all entries in your time sheets?

I think that's a fair statement.

Well, that was your intention when you prepared it? A. Yes, certainly.

So by an examination——

All or substantially all of the entries in my time sheets.

You didn't intentionally leave out any entries on your time sheet, did you?

Not that I can recall.

So it would only be by close analysis, and if [22] any were left out, you didn't intentionally

(Deposition of John Whyte.)

A. Not that I recall.

Q. So by examining your petition we can ascertain the number of phone calls that were to and from the various persons to whom talked on the phone?

A. There may have been occasions upon which I failed to note on my time sheet every phone call which I made or received.

Q. But the time sheet that you prepared at that time is the best evidence of what did occur at that time?

A. The best evidence I have now, yes.

Q. Yes, and you would have to just strain your memory to try to recollect something that you didn't write down on your time sheet?

A. I certainly would.

Q. That's what I meant. That would be true of conferences that you had that are reflected on your time sheet, and in turn are reproduced on your petition, conferences?

A. Yes, the conferences are reflected in the petition based upon what was noted on the time sheet.

Q. Now, you were in court on February 26, 1964, you, Mr. Whyte, at the conference in chambers?

A. My daily time sheet for February 26, 1964, states that I attended conference in Judge Tamm's chambers [4] re settlement of case.

Q. Yes.

osition of John Whyte.)

that was signed by Judge Tolin on that day
nating Mr. Hallberg's active duties and direct-
im to retain possession of money in the bank
under the control of the receiver?

Yes, I believe such an order was handed to

And you have it now in your file there,
n't you? A. I do.

Yours, I believe, is undated. No, it has the
date at the bottom, February 26.

That is correct.

That was about 4:30 in the afternoon, or
o'clock in the afternoon, as I remember it, but
s in the afternoon anyway?

No, the conference was in the morning. It
at about 9:30 o'clock in the forenoon of Feb-
26.

I stand correct. My memory had failed me.
directing your attention to your petition or
time sheets, whichever you prefer, on Febru-
5 you called Mr. Hallberg concerning the set-
nt; that's page 11, line 7 of your petition. [5]

I have a rather definite recollection of that
er.

Before calling Mr. Hallberg on that date,
received a telephone call from Mr. Camusi.
s on——

(Deposition of John Whyte.)

ceivership by settlement between Richman and Tidwell. That call came to me at a few minutes before 5 o'clock in the evening. I then attempted to reach Mr. Hallberg's residence at Corona Mar by calling Harbor 3818 and obtained no answer.

I finally reached one or both of them at a time later in the evening.

Mrs. Hallberg: Yes, 8:30 at night.

Mr. Enright: Q. That's on the 25th?

A. Correct.

Q. Yes. Now on the 26th, you——

A. I told them, incidentally, at that time I was—I had been informed that the receivership was being terminated, and that I was to meet them in Judge Tolin's chambers the following morning.

Q. In other words, on the 25th you told them that? A. Yes.

Q. Now, on the 26th you reported to Mr. Hallberg [6] and Mrs. Hallberg the results of the conference in Judge Tolin's chambers, February 26.

A. I note from my time slip that I received a telephone call from Mrs. Hallberg asking me what had taken place at the conference.

Q. You expended no time of your own on February 27 and 28; that's the Saturday and Sunday after that Friday phone call to——

osition of John Whyte.)

vance of Fees, as well as the attorney's Petition for Allowance of Fees, and a proposed form of Notice of Hearing on those two reports and petitions as necessitated by the court's order of February 26th relieving the receiver of his duties as of February 28.

Other than that expenditure of a half hour, and I assume was at your office or your home, were no other services rendered on the 27th of the receivership?

None on the 27th, and I have no time slip for the 28th.

That would be a Sunday. You next consulted Mr. Camusi, or he contacted you, rather, on March 1st?

If I may refer to my time slips for that date, I will find out.

Yes. [7]

My time sheet for March 1st shows that I consulted Mr. Camusi with regard to the problems connected with the turnover of the assets to Mrs. Tidwell, the payment of bills, and other matters.

Will you state the substance of that conversation as best you recollect it?

I don't have a definite independent recollection of that conversation, Mr. Enright. However, I think one of the subjects discussed was the prob-

(Deposition of John Whyte.)

not be received until on or shortly after the 1st of March. I say, I think I discussed that with you because there is a further notation on my March 1st time slip that I called you regarding the listing of creditors and the amounts of their claims in the Receiver's Report.

Q. That was the substance of the telephone conversation to me as to the listing of the creditors of the Receiver in the Receiver's Report, wasn't it?

A. I—as I recall, I explained to you that the Federal rules, local court rules required a listing of creditors and the amounts of their claims.

Q. That's right.

A. That I was in doubt as to how best to handle that [8] with reference to persons who were creditors as of the close of business on February 28, 1937 but for whom we did not have an amount of claim because their bill had not yet been rendered.

Q. And is that all you recollect of the conversations with Mr. Camusi and with myself on March 1st?

A. I must have discussed some other matters with Mr. Camusi, because my time slip says, "problems connected with turnover of assets to Tidwell, payment of bills, et cetera." What I discussed to Mr. Camusi about the problems connected with turnover of assets I don't recall.

Q. You did discuss with me, though, the li-

sition of John Whyte.)

from the various managers; isn't that right?

I don't recall that you told me that the amounts could be obtained from the various managers.

If you did, I'm sure you must have been taken, because the amounts could only have been obtained from the creditors themselves.

No discussion about the managers knowing they had purchased during the month of February? Does that refresh your recollection at all?

I can't recall.

Yes. Now you next had a conversation with Mr. Camusi on March 2nd, is that right?

If I may refer to my time slip for that date. In my mind, Mr. Enright, that it's possible that there may have been telephone conversations which were had either with you or Mr. Camusi which are recorded on these time slips, but I think I have that substantially all of the conversation are here.

That I understand.

Yes, on March 2nd I received a call from Mr. Camusi regarding title documents to be turned over to the receiver, Mr. Tidwell and regarding the receiver's accounting.

On the same day you received a call from Mr. Cosgrove, is that right?

I did. I recollect that Mr. Camusi asked me

(Deposition of John Whyte.)

were owned by the receivership. He asked v those were kept. I telephoned Mrs. Hallberg, she told me that they were kept in a safe de box at one of the banks.

I then think I called Mr. Camusi and arra for the delivery of those documents to his by Mr. and Mrs. Hallberg.

Mrs. Hallberg: Just Mister.

The Witness: It seems to me that Mr. Hal was [10] going to stop by the bank and them up.

Q. On March 3rd, your notes show no ser being rendered, do they?

A. None on March 3rd.

Q. March 4th you talked to Mrs. Hallberg you, on the subject of payment of post-Febr bills?

A. Yes, I did.

Q. That is on March 4th?

A. Yes.

Q. What was that conversation?

A. All I can recall, being refreshed from notation on my March 4th time slip, is tha discussed this question of paying bills for ser rendered on or prior to February 28 where the had not yet been received, or had not been rec until after February 28.

Q. And you had a phone conversation on M 4th with Mr. Camusi concerning that same su matter, did you?

sition of John Whyte.)

Camusi and to Mr.—yes, to Mr. Camusi and Enright re these matters. I believe that one matters must have been this——

Post bills, February bills? [11]

Yes, February services—bill didn't come in March 1 or after.

That's right, and what did Mr. Camusi tell in March 4th on that subject matter?

I can't remember.

What did I tell you on that subject matter?

It seems to me that you expressed the opinion then or at the time I talked with you on 1st that you felt the bills should not be

Yes, and Mr. Camusi, didn't he tell you in conversation of March 4th or after February conversations as related to your time sheets they would not pay those bills?

Yes, you refresh my recollection. Mr. Camusi was either in substance or in effect some time during those early days in March that he or his didn't desire to pay those bills. In fact, I think Mrs. Hallberg told me that Mr. Udall would pay the bills, something to that effect.

. Hallberg: Wanted us to do it.

Witness: And wanted Mr. and Mrs., or Mr. Hallberg to do it.

(Deposition of John Whyte.)

Mr. Enright: Do you recollect when, or
Mr. Udall said on that subject, Miss Cosgrove
Mrs. Hallberg?

Mrs. Hallberg: Yes, Mrs. Hallberg or Miss
grove.

Mr. Enright: Yes.

Mrs. Hallberg: On March 1st when he came
the office, he wanted us to pay all the bills but
they were our concern.

Mr. Enright: That is, Mr. Udall told you

Mrs. Hallberg: Yes, and there were one or
things that we had a question on that weren't
satisfactory, and he wanted us to write checks
hold them on those.

Mr. Enright: And did he say anything
having picked up the money for the week ended

Mrs. Hallberg: Yes, he expressed the manner
which has validity——

Mr. Enright: Well, I am not concerned—

Mrs. Hallberg: ——inasmuch as it is on a
basis, and of course if the rent was paid on a
day and applied to March, he thought they
to pick up the money.

Mr. Enright: Now, would you tell me your
recollection of what he said to you?

Mrs. Hallberg: That was exactly what he

Mr. Enright: He told you that it had val

Mrs. Hallberg: No. That was my comment

position of John Whyte.)

After all, the buildings were carried on a cash and because the rents at any one day did not to any one period, he felt that they should up those rents, and he had so directed the gers.

Whyte: By "those rents" you meant what, Hallberg?

s. Hallberg: What had been picked up over week end.

Whyte: For February 26, 27 and 28?

s. Hallberg: Yes.

Enright: Now, continuing, Mr. Whyte——

Whyte: Off the record.

(A discussion was had off the record.)

Enright: She would testify the same if she under oath, I am sure.

s. Hallberg: Yes.

Enright: Q. Now, Mr. Whyte, your next as to telephone calls apparently is March 9?

No. I made a telephone call to Mrs. Findeisen the 5th of March.

That's correct, my error. Yes, it is, to Miss isen on March 5th.

That's right. [14]

And your next, after March 5th phone call ss Findeisen, is March 9 to Mr. Camusi?

Speaking only of phone calls now?

(Deposition of John Whyte.)

counts and the payment of bills rendered during the first part of March.

Q. Now, you had a conference on March 7, and your time sheet show the March 7 conference. Is that the way? I don't—

A. Yes, I had a conference with Mr. and Mrs. Hallberg at their home in Corona Del Mar on the evening of March 7, which was a Sunday, regarding the problems incident to final accounting and preparation of schedules.

Q. Is that the day on which you phoned Judge Tolin?

A. Yes. We had returned from dinner at the nearby Country Club. We began discussing the bills matters. Among others we discussed the subject of paying bills which did not come in until after the first of March covering services rendered and materials furnished during February. Mr. Hallberg then called Judge Tolin and spoke with the Judge about several matters.

He then handed the phone to me, and I discussed the subject with the Judge, who instructed me to have those bills paid by Mr. Hallberg. In fact, as I recall correctly, Judge Tolin, I think, made the same instruction [15] to Mr. Hallberg. All I can hear were Mr. Hallberg's replies to the Judge. It seems to me they were discussing the same

sition of John Whyte.)

s residence and you heard him mention the
t matter of paying these bills?

I think he did. Yes, I think he did mention
subject matter.

Do you recollect what else he said, if any-
that is, Mr. Hallberg?

I can't recall.

Now, you in turn talked to Judge Tolin at
ime? A. I did.

Did you tell him that Mr. Camusi and I had
to you concerning this subject matter and
e the court or the Judge that there was a dis-
between us?

I believe I did. Yes, I think I told the Judge
Mr. Enright had objected to their payment;
Mr. Camusi was amenable to the payment, or
he wanted them to be paid by us.

Well, did you use the word "amenable"

I—I can't remember what word I used, Mr.
ht, but the substance of what I said was that,
y best recollection brings it back to me, that
16] didn't wish the receiver to make the pay-
s, and that Mr. Camusi either did or was agree-
to it.

And did you tell him also that Mr. Udall
requested Mrs. Hallberg to pay them?

(Deposition of John Whyte.)

utilities, and things of that nature as shown on Exhibit C?

A. I didn't—I had no idea as to the detail of bills. I—what they were, specific items had rendered or services performed, I didn't discuss.

Q. You didn't know, is that the——

A. I don't know; I don't think I knew. I don't know that they covered, or Mr. Hallberg had reported that they covered services rendered or materials delivered during the month of February for which no billing had been received until on or after the 1st of March. [17]

* * * * *

Q. Did you realize or know that there was a \$6,000 involved in that transaction?

A. In what transaction?

Q. In the payment of these bills after March 1954. [18]

A. Before I answer, may I check my time here to see whether I had notified you?

What was the last question, Miss Reporter?

(The pending question was read by the reporter.)

The Witness: I note from my March 10 slip that I conferred with Mrs. Hallberg and Findeisen, the bookkeeper, at the Oliver Cron regarding the Receiver's Final Report to the Court and the makeup of the schedules to be attached thereto. I had no idea of the amount involved.

sition of John Whyte.)

liabilities incurred prior to February 28, but not prepared until after that date, was ready at the time I discussed the matter with Hallberg and Mrs. Findeisen on March 10.

Enright: Q. And you further conferred with Mr. Hallberg on March 13, going over the report and the schedule, didn't you? A. No.

I am taking that from your petition on page 10. On March 13 you have listed there as a service being rendered going over the report and schedules. I assume it to be of the receiver.

Just a moment. No, both my petition and my sheet for March 13 state "Going over draft report and schedules to be attached thereto by the [19] receiver."

That's what was my question, went over them with the receiver, Mr. Hallberg. A. Yes.

On March 13. A. That's right.

Then the next date you rendered services was March 15 concerning the subject matter of petition 15. You had a conference with Judge Tolin? I did.

And the next day——

May I amplify my answer? On March 13 Mr. Hallberg came to my office, and we went over a draft of his final report and schedules, which were hereafter prepared in final form and mailed for signature

(Deposition of John Whyte.)

Q. Your next rendition of services is on March 15 when you had a conference with Judge Tolin?

A. I did.

Q. And that is concerning fees? A.

Q. Who was present?

A. I was the only person present.

Q. What was said? [20]

A. To the best of my recollection, I asked Judge Tolin whether or not he desired that I name a specific amount in my petition for fees. That question was prompted by the fact that Judge Tolin had instructed the receiver not to name a specific amount in his petition for fees.

Q. When was that instruction given to the receiver, Hallberg, if you know? A. I do not know.

Q. When were you advised of it?

A. That I don't know either. I know that Judge Hallberg so advised me at one time.

Q. Now the next day you rendered services on March 17. You phoned Mr. Camusi concerning closing the receiver's books? A. I did.

Q. At no time did you inform me or Mr. Camusi of the direction given by the court as you stated on March 7, Sunday evening, 1954, is that correct?

A. Not that I can recall. By that, you mean no time prior to the filing of my—of the receiver's first and final report and petition for fees with the court and the mailing of a copy thereof to you?

Q. Was there anything else said by Judge

sition of John Whyte.)

Yes.

How long did the conference last?

It was a very short conference, because Judge was about to take the bench.

What is "very short"?

Well, I'm sure it didn't last—I had another before Judge Tolin at the time concerning Anglewood Federal Savings and Loan Association. To the best of my recollection, that was the principal matter which I discussed with him.

What is "very short" was the question, Mr. [?]

Whatever conversations I had with the Judge regarding my petition for fees were less—were five minutes or less, to the best of my recollection.

And all you recollect that was said in that five minutes or less is that you asked him whether you should specify an amount?

And his reply.

And his reply? A. Yes.

And——

His reply was that—my recollection is recalled a bit by your question—his reply was that something to the effect that—strike that.

I recall that the question of extraordinary services was discussed. Judge Tolin said something to the effect that the defense of the receiver on the subject of the petition was not the subject of the

(Deposition of John Whyte.)

Q. You had explained that to him, had you subject matter which resulted in his statement?

A. Yes. In fact, at the time I first learned of the criminal citation on or about February—about January 29, I believe that I telephoned John Tolin and discussed the matter.

Q. The Smog Control and the Air Pollution matter and the contracts pertaining to it were considered by you during the period about December 23 of 1953—

A. Yes, the day before.

Q. Wait until I finish now, because I want to leave it open; I don't want to pinpoint the date and the end of December, that last week in December of 1953, that subject matter of the Air Pollution contracts—well, specifically, if you want to look it up, December 28, 1953, page 5, line 3 of your petition.

A. My December 24 time sheet reflects a conference I had with Mr. Hallberg at the Cromwell the day before Christmas in the afternoon which lasted for about—my trip out and back to the conference lasted for two and four-tenths hours.

Q. That is in the afternoon you know?

A. It was after lunch. Yes, I had lunched at the University Club that day and played dominoes with some of my old friends from O'Melveny Myers. Mr. Hallberg asked me to examine the contracts with reference to Mr. Richman's contracts to

sition of John Whyte.)

And you returned them to Mr. Hallberg several days later?

I did. I wrote a letter.

That would be about December 29 that

I wrote a letter dated December 30, 1953, to Mr. Hallberg.

Enright: December what did he say?

Witness: December 30, returning the files regarding the installation of incinerator equipment at the Canterbury and the Oliver Cromwell apartment buildings.

Enright: Q. What did you advise him orally or in writing on that subject matter?

I advised Mr. Hallberg orally, I believe, that after he examined the files, it was my opinion that the contracts were binding contracts, but that he had no obligation to pay the balance of the purchase price until after the equipment had been installed and approved by the Air Pollution Control District, at which time he became—would become liable for 90 per cent of the balance of the [24] purchase price which amounted to 90 per cent of the original

Did you inform him in any manner as to the time of performance or as to the subject matter—
as to time of performance?

(Deposition of John Whyte.)

Q. Did you inform him or advise him in any respect concerning the subject matter of this elimination of smog was a subject for criminal prosecution and ordered by the Los Angeles District Pollution Board? A. I did not.

Q. Did you realize that there was such a problem; that is, elimination of smog from these particular apartment houses at that time?

A. I don't recall that I knew anything particular about the smoke condition at the apartment; I knew only that this—these contracts had been signed and that the installation was to be made.

Q. And that the payment under the contract was conditioned upon the Air Pollution Board approving the installation; you saw that in the contract, didn't you? A. I did.

Q. And you knew then, didn't you, that the [25] Pollution Board was going to make a contract for a test, investigation of the installation, didn't you?

A. I did.

Q. Did you know that it would be a violation if that installation wasn't installed?

A. I suppose I did.

Q. Did you advise Mr. Hallberg?

A. I didn't discuss the question of installation with Mr. Hallberg. I so testified.

Q. That I appreciate, but you haven't so testified until now that you didn't advise Mr. Hallberg.

position of John Whyte.)

No. Now, did you know that during January the performance of that contract was being held up?

I had no knowledge whatever that the performance of that contract was being held up. I——

Mr. Hallberg never asked your advice on that matter at all, did he?

I have neither no knowledge now, nor have reason to believe that it was being held up.

* * [26]

Have you your time sheets there, Mr. Whyte?

I have.

May I examine them again?

(The documents were handed to Mr. Enright.)

Enright: Now, it was your practice, wasn't it, Mr. Whyte, to make a notation as to the amount of time expended during a particular day——

Witness: It was.

Enright: Q. ——by tenths of an hour?

As nearly as I can figure it.

Yes. So if we were to read off the time specifications on each of these time sheets, we would get the amount of time expended on the particular day, is that right? A. That is correct.

Well, then, I would like to read into the record the time expended on the respective days

(Deposition of John Whyte.)

Q. Now, commencing on November 30 then 2.1 hours.

A. If it will be helpful to you, the green slips are my slips, and the yellow colored slips are my partner, Mr. Fitzpatrick's time slips.

Q. Yes. All right, so the first one being a there appear the figures 2.1, meaning two and one-tenth——

A. One-tenth. [34]

Q. ——one-tenth hours. December 1st, six

A. Six hours.

Q. December 2nd, 2.3 hours. December——

A. 2.3 hours of my time, and one and one-tenth hours of Mr. Fitzpatrick's time.

Q. That's on December 2nd? A. Right.

Q. December 3rd, six hours of your time. December 4th, seven-tenths of an hour of Mr. Fitzpatrick's time. December 7th, eight-tenths of an hour of your time. December 10, three-tenths of an hour of your time. December 12, three-tenths of an hour. December 16, four-tenths of an hour. December 17, two-tenths of an hour. December 18, 3.9 of an hour? A. Right.

Q. December 21, three-tenths of an hour. December 22, six-tenths of an hour. December 23, one hour. December 24, 2.4 of an hour?

A. Right.

Q. December 28, four-tenths of an hour. December 27, three-tenths of an hour. December

osition of John Whyte.)

ary 9, four-tenths of an hour. January 11, one-
of an hour. January 15, 3.4 hours?

Right. [35]

January 19, 1.1 hours. January 25, 5.6 hours.
ary 26, 1.3 hours. January 26, two-tenths of
ur. January 27, two-tenths of an hour. Janu-
3, 2.2 of an hour. January 29, three hours?

That's true.

Those are all correct through January, my
ag of the number of hours?

So far as I have observed they are.

Yes. Yes. December 1st is 2.6 hours. De-
r 2nd—

This is February 1st, Mr. Enright.

Thank you, you are entirely correct. Febru-
is 2.7 hours. February 3, is 2.3 hours. Feb-
4th is 1.1 hours. February 5 is five-tenths
February 6 is two-tenths hours. February 8
r-tenths hours. February 9 is 1.2 hours. Feb-
10 is five-tenths hours. February 12 is four-
hours. February 13 is three-tenths hours.
ary 15 is 2.2 hours. February 16 is 1.7 hours.
ary 17 is 2.4 hours. February 18 is three-
hours. February 25, five-tenths hours. Feb-
27, five-tenths hours. February 26, one hour.
se are correct through February as I read

A. So far as I can see.

Yes. March 1st, 2.4 hours. March 2, 2.1 hours.

(Deposition of John Whyte.)

hours. March 11, seven-tenths hour. March 12, tenths hour. March 13, one hour. March 14, one hour. March 17, 2.5 hours. March 18, 1.8 hours. March 24 is 1.3 hours. March 25 is six tenths

April 2, three-tenths hour. April 7, four tenths hour. April 8, two-tenths hour. April 10, nine-tenths hour. April 12, 2.4 hours. April 21, six-tenths hour.

That is the time reflected upon your time sheet.

A. That doesn't include at least one and possibly two time slips since April 21 nor does it include one-tenth hour expended on April 16 and one-tenths hour on April 19. For example, it doesn't include the time spent in deposition here last Tuesday, which was April 22, was it?

Q. April 22, and today, April 24. Yes. That is correct. And you are asking to be paid \$3,000 in extraordinary fees for the smog matter?

A. To the extent that the court determines I should be paid.

Q. No, but you are asking to be paid \$3,000 in extraordinary fees, aren't you, Mr. Whyte?

A. Right. That is what my petition asks for, Enright.

Q. Yes, and that's the amount you are asking for?

A. That is correct. And I expect to ask for additional compensation for the time I have devoted and will devote to this matter since I filed my petition for fees on March 12.

sition of John Whyte.)

I think you will find—I will let the figures for themselves.

Well, your petition shows 90 plus hours, and want some \$3,000 ordinary fees for those 90 that are shown on your petition?

My petition shows 91 hours up to and in-
g, I believe, March 17 or 18.

Now, I note here on December 1st you spent
urs, and among other things you accompanied
Hallberg to Union Bank and Trust Company
“we conferred with Mr. Lipman, execu-

“Executive Vice-president and others re
man trust.”

Will you read on the rest of it?

“We opened a new account in the name of
J. Hallberg as receiver of the former Richman
Hallberg also signed an authorization to
e checks written by Mrs. Tidwell or Richman
on or before November 30, 1953, to the new
at.”

Go ahead.

“We then visited the La Loma apartments
we spoke to Miss Schumacher, the manager,
ted to her order appointing Hallberg as re-
and collected certain rents totaling \$787.50.
visited Fountain Manor apartment hotel,
Mrs. Linhardt exhibited order appoint-

(Deposition of John Whyte.)

release funds to Hallberg. Same at Cante apartment hotel. Spoke to Mrs. Polly Gregg Western Arms apartment hotel, spoke to Maude Kennedy. Drove 22 miles in my car said apartment managers."

Q. You were rendering legal services, were you, when you were going with the receiver to instruct the managers to turn money over to him?

Mr. Whyte: I will object to the question as argumentative, calling for the conclusion of the witness, and let the facts speak for themselves. I refuse to answer it on those grounds.

Mr. Enright: Q. Did you do anything other than is noted here in these notations you have read on December 1st, 1953?

A. I believe I have already stated that as to my time slips they reflect with substantial accuracy most, if not all, of the things which I did each particular day. In some instances there have been minor omissions that I failed to put down on my time slips.

Q. Do you recollect any minor omission of things that you failed to put down on that December 1st time slip?

A. No, I don't recall anything else. Incidentally——

Q. You knew, of course, on that day that

sition of John Whyte.)

I think I knew that his bond had not been with the court.

Very well.

And if I may explain my answer further,

Go ahead.

These time slips are virtually in every in-
made out at the close of the day upon which
services are rendered. In many instances—in
most instances—I keep a running record
of the course of the day as I perform the par-
service; I note it on the slip. Then I review
the matters that evening and make certain
my slip correctly reflects what I have done
of the course of the day.

But you did do these acts on December 1st
you have noted on your time slip?

I did.

Yes, sir. Now, on December 2nd you ex-
d 2.3 hours. Will you read your notation
or so that it will be accurate from the read-
your own handwriting?

“Obtained form of petition for appointment
s firm as attorneys for receiver and form of
thereon. Dictating draft of petition and order
revising same. Conference with Hallberg re his
Telephone [40] call to Camusi for informa-

(Deposition of John Whyte.)

Q. And that reflects the things you did on December 2nd as best you can now recollect the that right? A. It does.

Q. Now, on December 2nd Mr. Fitzpatrick, partner—am I correct so far? A. Yes.

Q. That he is your partner? He expended an hour and a half in rendering the following service is that correct— A. Yes.

Q. —as noted on this note, this being written. Shall we read it, or give it to the reporter to have her copy it? A. Be glad to read it.

Q. All right, you read it then.

A. "Hallberg came in at 9:00 a.m. re his position as receiver. I telephoned Hecht at Fidelity and Deposit. He said that he had been asked last week by Richman to put up a supersedeas bond on appeal, that if a writ of supersedeas were issued we might not be able to collect the premium on the bond out of the assets of the receivership and therefore wanted to wait on the issuance [4] of the bond to see if a supersedeas were issued. I reported this to Hallberg. We agreed to wait an hour.

"After a while, Hallberg suggested that he go to Judge Tolin's secretary. He called her, but she told Judge Tolin, who said to get the bond in right away and that he would see that the premium was paid out of the receivership assets. I phoned Hecht

sition of John Whyte.)

led back in a few minutes and said he would
he bond. I gave him the title of the court and
and Hallberg went over to his office to get
nd. Whyte came in and I reported to him
had happened."

Now, on December 18, you expended 3.9
Would you read your notes as to what your
e consisted of on that day?

"Telephone calls to and from Mr. Harrison
ain facts necessary to preparation of petition
uthority to pay Christmas bonuses. Prepara-
nd verification of said petition. Telephone call
Camusi asking for information re progress of
ership. Telephone call from Hallberg re peti-
Clearing with Judge Tolin's secretary re when
can sign order. Presentation of petition
order to Judge Tolin ex parte in his court-
The Judge signed order. Left word for [42]
son to issue checks in payment of bonuses.
rence with Mrs. Hallberg re factual data
d for petition to renovate the individual apart-
as they become vacant. Telephone call from
son re manner of paying Christmas bonuses."
That reflects the services you rendered on
ay, December 18, does it not?

To the best of my knowledge, it does.

This is the only written record you have of
ervices rendered that day, isn't it?

(Deposition of John Whyte.)

Q. Now, on December 24 you expended 2.4
Would you read your notes as to services that
rendered on that day?

A. "Conference with Hallberg at Oliver
well re proposed petition for authority to re
apartments, transfer of fire insurance polic
a mutual company, report to be filed by re
does receiver have to carry out Richman's co
to purchase incinerator equipment, bookk
problems, and other matters."

Q. What were the "other matters" that yo
recollect at this time that were considered b
as attorney for the receiver?

A. I don't recall. [43]

Q. Have you any memoranda or record an
that will indicate what they were?

A. I do not.

Q. Now, the incinerator equipment refer
there is the equipment involved in the Smog
trol order or citation, criminal citation, isn't

A. It's the equipment specified in the con
which Mr. Richman made with Air Pollution
trol, Inc., covering installation of certain
control equipment in the incinerators at the
Cromwell and the Canterbury.

Q. On December 24, is it your recollection
the file was then given to you by Mr. Hallber
taining to that subject matter of the incine

sition of John Whyte.)

I took the files with me in my brief case
I left Mr. Hallberg's office at the Oliver
vrell.

Thereafter you read the file, did you——

I——

——and you noted the time you expended
in connection on your time sheets? I refer you
specifically to December 28, being your next time
reading as follows: "Telephone calls from
Mr. Harrison re construction of incinerator
equipment for Canterbury and [44] Oliver Crom-
well. Also re handling of petition for authority to
rent apartments." Is that correct, you did——

On December the 27th, the preceding day——

Well now, that is December 28th that I just
asked you. A. That is right.

Now, on December 27, the next notation here,
seems to be out of order, but inadvertently,
sure, did you have something to do with that
particular matter of the contracts?

Yes. My time slip shows examination of files
with reference to installation of incinerator equip-
ment for Canterbury and Oliver Cromwell and lia-
son of receiver to carry out contracts for such
installation.

And you expended three-tenths of an

—— A. I did.

(Deposition of John Whyte.)

Q. Now, on December 24 you expended 2.4 h
Would you read your notes as to services that
rendered on that day?

A. "Conference with Hallberg at Oliver C
well re proposed petition for authority to rene
apartments, transfer of fire insurance policie
a mutual company, report to be filed by rece
does receiver have to carry out Richman's con
to purchase incinerator equipment, bookkee
problems, and other matters."

Q. What were the "other matters" that you
recollect at this time that were considered by
as attorney for the receiver?

A. I don't recall. [43]

Q. Have you any memoranda or record any
that will indicate what they were?

A. I do not.

Q. Now, the incinerator equipment referred
there is the equipment involved in the Smog
trol order or citation, criminal citation, isn't it?

A. It's the equipment specified in the cont
which Mr. Richman made with Air Pollution
trol, Inc., covering installation of certain
control equipment in the incinerators at the C
Cromwell and the Canterbury.

Q. On December 24, is it your recollection
the file was then given to you by Mr. Hallberg
taining to that subject matter of the inciner
and the smog control or the smog control cont

sition of John Whyte.)

I took the files with me in my brief case
I left Mr. Hallberg's office at the Oliver
Cromwell.

Thereafter you read the file, did you——

I——

——and you noted the time you expended
in connection on your time sheets? I refer you
specifically to December 28, being your next time
sheet reading as follows: "Telephone calls from
Mr. Harrison re construction of incinerator
plant for Canterbury and [44] Oliver Crom-
well. Also re handling of petition for authority to
erect apartments." Is that correct, you did——

On December the 27th, the preceding day——

Well now, that is December 28th that I just
showed you. A. That is right.

Now, on December 27, the next notation here,
which seems to be out of order, but inadvertently,
sure, did you have something to do with that
particular matter of the contracts?

Yes. My time slip shows examination of files
with reference to installation of incinerator equip-
ment for Canterbury and Oliver Cromwell and lia-
son of receiver to carry out contracts for such
installation.

And you expended three-tenths of an

—— A. I did.

(Deposition of John Whyte.)

already the December 28th time sheet, is December 29. Would you read that time sheet?

A. Surely. "Taking petition for authority to renovate apartments to Judge Tolin's chambers. Telephone call to Harrison re court order re installing receiver to [45] permit plaintiff's appraisal to visit apartment houses and plaintiff's accountants to inspect 1953 books."

Q. Now, did you have a conference with Judge Tolin in chambers on December 29 concerning the subject matter of that petition?

A. I may have. I don't recall.

Q. You returned the Smog Control contract to Mr. Hallberg or Mrs. Hallberg or Mr. Harrison on the date shown in your transmittal letter which I believe, already referred to in the deposition?

A. Yes.

Q. Would you read your notes as to the services rendered on January 4th resulting in 1.9 hours being expended?

A. "Conference with Judge Tolin in chambers re contents of first report to be submitted by receiver, petition for authority to renovate, proper petition for authority to inventory assets and other matters. Telephone calls from Mrs. Hallberg re discussion of above items. Telephone call to Harrison re objections, if any, to inventory hereinabove mentioned. Telephone calls to Camusi and to right asking if they would agree not to require

osition of John Whyte.)

port of receiver. They both agreed it was unnecessary." [46]

Now, on January 15 you expended 3.4 hours. you read what services you rendered on that

"Telephone call from Lawrence Martin and from Camusi re matters to be considered at ng this afternoon on receiver's petition for ority to renovate apartments. Court appear-re hearing on said petition. Petition was grant-Conference with Hallberg in preparation for ng on said petition."

On January 19, 1953, you expended 1.1 hours rendering the following services: "Preparing report of receiver and petition for instruc-. Telephone call to Harrison re data to be ind in said report." Is that correct?

That's right.

On January 25——

In fact, if I may state for the record, Mr. ght, I think the allegations of the petition n I have filed as to the nature of the services rmed on the various days are substantially in rimity with the notations on the time slips, so

That I am aware of.

——I think this is unnecessary, but if you to build up a long record here I suppose that's

(Deposition of John Whyte.)

A. You already have noted in the deposition number of hours spent on each day.

Q. Will you answer this question: On Jan 25, 1953, you expended 5.6 hours in rendering following services:—

A. Shall I read them?

Q. Yes, if you will.

A. "Instructing and working with Harrison, Hallberg's bookkeeper, re preparation of schedules to be attached to receiver's first report. Dictating contents of receiver's first report and petition for instructions. Preparing notice of hearing on first report of receiver and petition for instructions."

Q. Now, what instructions did you give to Harrison on January 25 concerning Hallberg's bookkeeping or the books?

A. I instructed him with reference to the preparation of the schedules to be attached to the receiver's report.

Q. Do you recollect what you told him during that period of time?

A. If I may see a copy of your local District Court rules, I think perhaps it would refresh my recollection.

Q. Surely.

(The document was handed to the witness.)

Mr. Enright: Q. You might just tell us the section you instructed him concerning. [48]

A. I talked to him with reference to the rec-

osition of John Whyte.)

n that Mr. Hallberg's report should contain a summary of the operations of the receiver, an inventory of the assets, a schedule of all receipts and disbursements, and a list of all known creditors with names, addresses and amounts of claims, including taxes of all kinds, conditional sales contracts, and contingent claims known or which it is believed possibly exist.

Harrison asked me a great many questions about the preparation of schedules which would accurately reflect an inventory of the assets, a schedule of all receipts and disbursements, and a list of all known creditors with names, addresses and amounts of claims, et cetera.

You gave him a copy of the rule, didn't you?

No, I didn't give him a copy of the rules.

He took it down in shorthand when you read it to him, is that right, or do you know?

I don't know whether he took it down in shorthand or not. I know I explained the requirements of the rules to him, and he had a number of questions as to the mechanics of setting up the schedules, what should be shown thereon.

Now, directing your attention to January 27, did you read your notations on that day? [49]

"Telephone call from Harrison re problems involved in preparing receiver's first report. Also oral citation for alleged violation of smog regu-

(Deposition of John Whyte.)

knowledge or notice you had of a criminal citation on that subject matter, is that right?

A. It is.

Q. That's your time slip for January 27, isn't it?

A. That is correct.

Q. But it says '53. It means January 27, 1953.

A. It should be '54.

Q. Yes. You may change it now, if you want to, whatever you desire.

A. (Marking on document.)

Q. Then two days later, on January 29, 1954, you telephoned Mr. Richman, didn't you, in accordance with—or read the January 29 notation of services, will you, reflecting three hours expended?

A. "Telephone call from Harrison re criminal citation for violation of smog regulations. Dismissing ex parte order and affidavit extending time for filing receiver's first report and petition for injunction. Telephone call from Mrs. Hallberg re criminal citation for violation of smog regulations. Being made [50] to dismiss criminal citation for violation of Smog Control Ordinances. Proceeding with Judge Tolin's signature on abovementioned order. Telephone call to Mr. Tow in office of Air Pollution Control District re citation for violation of Smog Control Ordinances. Telephone conversation with Judge Tolin re receiver's first report. Judge decided to modify Rule 18 (b) and postpone filing report until March 20, 1954, so that it might cover a full month." (Marking on document.)

position of John Whyte.)

ment. Conference with Hallberg re his first
t and other matters incident to receivership.
phone call to Camusi re delay in filing report.

May I see it?

Surely. I also recollect, although no mention
is made on the time slip, that I telephoned——

Mr. Richman?

——you or Mr. Richman or both of you.

At about 4:15 in the afternoon, Friday, Jan-
29, and left the message with Mr. Richman's
clerk, isn't that right?

I think that's right. I couldn't find Mr. Rich-
man in his office, and I didn't find you in your office.

Now, Mrs. Hallberg—— [51]

Incidentally, my telephone calls to you and
Mr. Richman were with regard to this criminal
citation, because Mr. Richman was named as a de-
fendant in the citation.

Yes, charged with a misdemeanor, isn't that
right? A. Yes, it was a misdemeanor.

Yes. Now you have the notation here: "Tele-
phone call from Mrs. Hallberg re efforts being made
to dismiss criminal citation for violation of smog
control order." A. "Ordinances."

"Ordinances." Thank you. And then imme-
diately following that, will you read the next phrase

I am having a little trouble with the first

(Deposition of John Whyte.)

and affidavit extending time to file the receipt report and petition for instructions.

Q. Now, going back to this portion of it relating to Mrs. Hallberg's efforts, did you have a conversation with her concerning her efforts to oppose the criminal citation for violation of the smog—

A. Apparently did from my notes.

Q. What was the conversation?

A. I don't recall.

Q. On February 1st you appeared in Department 30A of our Los Angeles Municipal Court.

A. "Re arraignment in City of Los Angeles versus Richman and McConnell."

Q. At that time I told you that I would appear in behalf of Mr. Richman and also offered to appear for Mrs. McConnell, didn't I?

A. I don't recall that you offered to appear for Mrs. McConnell. I know I was appearing on behalf at Mr. Hallberg's request since she was not an agent at the time.

Q. After I had made a statement to the court, then you requested likewise that the matter be continued until February 23, is that right?

A. As I recall, we both requested that the matter be set over until February 23 at 9:30 a.m.

Q. Your request came after my request, then, didn't it?

sition of John Whyte.)

Yes. You expended 2.6 hours on that matter, you, on that day?

On that matter alone, of course not.

All right.

There are a number of other notations shown slip which I would like to read, if I may.

You have once read them into the record, I

I have not read them into the record.

Well, pardon me, you have not, so read the [53] of it then so we can——

“Conference with Mr. Tow of Air Pollu-

No, read the whole of it, “February 1st.” If re going to read a portion of it, please read hole.

Well, I have already read the first part. If like me to read it again, I will.

Yes, thank you.

“Appearance in Department 30A, Los An-Municipal Court re arraignment in City of angeles versus Richman and McConnell. Set until February 23 at 9:30 a.m. Conference with ow of Air Pollution Control re case. Tele-call to Harrison urging him to see that Oxy gets to work immediately on installation of control equipment. Telephone call from Mrs.

(Deposition of John Whyte.)

Q. Will you read your memorandum of the
ices rendered on February 2 resulting in 2.7 h
being expended?

A. "Telephone conversation with Harrison
tax returns to be filed by receiver. Examination
defendants moving papers re new trial. Telep
call to and call from Camusi re tax problems
necessity, if any, for moving for the appoint
of a permanent receiver. [54] Telephone ca
Harrison requesting names of known creditors
telephone conversation with Mrs. Hallberg re p
ems discussed with Camusi. Telephone call :
Mr. Hallberg re tax problems. Conference
Judge Tolin re appointment of Hallberg as pe
nent receiver and re associating tax counsel for
problems."

Q. Now on February 3rd you next rend
services on the Smog Control matter which res
in the following memorandum being made, a
quote it: "Telephone call from Mrs. Hallber
tax problems, removal of—— A. Part.

Q. ——part of parapet from Canterbury
Smog Control problems. Conference with Mrs. I
berg re such problems——

A. ——as Smog Control, advisability of se
Western Arms and Fountain Manor, tax retu
et cetera."

Q. All right.

sition of John Whyte.)

Well, I am only inquiring about the Smog Control matter.

There is another notation here "Telephone conversation with Town of Air Pollution Control reference with City Attorney and inability of Air Pollution Control to perform their contract at Canterbury. Telephone call to Oxy Air Pollution Control re their ability to in-equipment promptly—— [55]

Promptly.

——at Oliver Cromwell and Canterbury."

These are the only notations pertaining to the Smog Control matters as of that day, February 4th.

A. I believe that is correct.

There was a total of 2.3 hours rendered, how much time expended that day?

On those and other matters.

On those and other matters. On February 4th you had a telephone conversation with myself, Mr. Enright, concerning the Smog Control problem.

A. I did.

And on various other matters?

That's true.

And the total for your time of February 4th was 2.1 hour?

That is true. That matter that you mentioned the other matters were performed on that day as shown on the time slip.

You also dictated a letter, did you, to the

(Deposition of John Whyte.)

Q. Have you got that letter? I haven't that yet, Mr. Whyte?

A. I showed it to you on two occasions. It [56] my files and you may see it again if you like.

(The document was handed to Mr. Enright.)

Mr. Enright: Q. Thank you.

For the record, I will read the letter into it. It is addressed to Air Pollution Control District, South Santa Fe, Vernon, California. February 1954, attention Mr. Tow.

"Gentlemen:

"Following my telephone conversation with Mr. Tow yesterday afternoon regarding the installation of Oxy Aire——

Mr. Whyte: "By Oxy Aire."

Mr. Enright: ——by Oxy Aire of Smog Control equipment in incinerators located at the Oxy Cromwell apartment hotel, 418 South Normandie, Los Angeles, and the Canterbury apartment hotel, 1746 North Cherokee, Hollywood, I discussed this matter over the telephone with Mr. Manalis, one of the officers of Oxy Aire. Mr. Manalis informed me that his company had on hand sufficient material to install such incinerator equipment, including enough metal of a particular heat resistant type which is in a somewhat short supply throughout the country. Mr. Manalis further stated that his company would commence the work of installing

estimated that it would take from two to three to complete the installation. [57] I trust this information will be helpful to you.

Yours very truly,

John Whyte."

Whyte: "Attorney for Roy E. Hallberg, re- of the assets of the former Richman trust."

Enright: Q. Now, to summarize your serv- after February 4th, 1954, the services consisted of appearing up at the City Attorney's office, not, at a conference had between one of the Prosecutors, yourself, Mr. Hallberg, and my-

You are speaking now of my services only reference to the Smog Control problem?

Oh, yes, just the Smog Control problem.

And after which date did you mention?

After February 4th. That's the date of the there which we just read into the record.

No, they did not.

What else did you do?

On February 5th, I received a telephone call Mr. Camusi advising me that Mr. Richman been picked up on a bench warrant. I remem- questioned that. I told Mr. Camusi that he be in error, that the criminal matter had been ued for several weeks, but Camusi insisted hat information had been given to him by

(Deposition of John Whyte.)

phoned to Mr. Tow of Air Pollution Control District regarding that matter.

Q. Regarding what matter, the picking up of Mr. Richman, or what?

A. Yes, regarding whether or not the case—something had happened to the lawsuit that had been reactivated without my knowledge.

Q. I see. Did you call him from Mr. Richman being picked up, or you were representing the receiver then? Your problem was Mr. Richman picked up, wasn't it, not—

A. No. I was concerned—

Q. I see.

A. —for fear the action taken against Mr. Richman would lead to action being taken against Mr. Hallberg or his agents; that they might be picked up on a bench warrant.

Q. Well, will you proceed to explain what services you rendered concerning the Smog matter other than this telephone call from Mr. Camu-

A. If you will allow me to look at my statement I will tell you.

Q. Proceed, sir.

A. On February the 9th I attended a conference among Messrs. Tow, Enright, Hallberg, and myself in the office of Deputy City Attorney David [redacted] criminal complaint charging violation of Health and Safety Code on account of [59] smoke incinerator at Oliver Cromwell. Complaint was

sition of John Whyte.)

That's right.

Any other services on the Smog matter other than the telephone call from Camusi?

Any services subsequent now to February 9, 1953, to your question?

Yes, February 4th—I won't argue the point with you. The record will speak for itself.

Well, without having to go through each and every one of the rest of my time slips from February 9 to February 11, let me say that I don't recall of any further action in connection with the Smog Control problem, subject to being corrected by the allegations in your petition.

Well, the fact is that on that day when we were in the City Prosecutor's office, Mr. Davis, the City Prosecutor, told you after you had signed a statement in his office that the complaint, criminal in nature, would be dismissed, isn't that right?

He did.

So that was the end of the matter, wasn't it?

I think it was, as I say. I may have advised Hallberg later with reference to performance on these contracts which Mr. Richman had entered into with Air Pollution Control District. I am not sure of it. [60] * * * * *

You commenced private practice, or partnership with Mr. Fitzpatrick about January 1st, 1953?

I went into partnership with Mr. Fitzpatrick

(Deposition of John Whyte.)

A. I was, for a period of almost exactly years.

Q. And before becoming associated with firm, what?

A. I was associated with the firm of Schul & Laybourne from approximately March, 1940 June or July of 1941.

Q. Have you now recited all of your assertions since you commenced practicing law in fornia? A. I have. [62]

* * * * *

[Endorsed]: May 7, 1954.

[Endorsed]: No. 14702. United States Court of Appeals for the Ninth Circuit. Frederick I. Richman, Appellant, vs. Lyda Tidwell, Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, and John Whyte, attorney for Receiver, Appellees. Lyda Tidwell, Appellant, vs. Frederick I. Richman, Roy E. Hallberg, as Receiver of all the real and personal property constituting the former Richman Trust, and John Whyte, attorney for Receiver, Appellees. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed: March 26, 1955.

/s/ PAUL P. O'BRIEN,

In the United States Court of Appeals
for the Ninth Circuit

No. 14702

A. TIDWELL, Etc.,

Plaintiff and Appellant,

vs.

DERRICK I. RICHMAN, Etc., et al.,

Defendants and Appellants.

E. HALLBERG,

Receiver.

STATEMENT OF POINTS

The Trial Court erred in assuming it had power or jurisdiction to adjudicate the plaintiff's defendant's pro-rata rights to the balance of funds in the possession of the receiver upon settlement of the receiver's accounting.

If the Trial Court did have power or jurisdiction to determine the plaintiff's and defendant's pro-rata rights to the balance of the funds in the possession of the receiver upon settling his account, the court committed error in the following particulars:

By failing to charge the plaintiff's interest in the balance of the funds in the amount of \$785.00 which was under the control of the receiver, which the plaintiff's agents took possession of and re-

;

agents which were required by the order of Court to be collected by the receiver;

(C) By failing to charge the plaintiff's interest in the balance of the funds in the amount of \$2027.27, being a sum of money paid by the receiver on account of an obligation assumed and required to be paid by the plaintiff in accordance with the settlement agreement made by plaintiff and defendant terminating the receivership and settling the dispute;

(D) By granting the plaintiff a credit in the amount of \$2476.38, being one-half the real property taxes which were paid by the plaintiff, and pro-rating the balance of the funds remaining in the possession of the receiver between the plaintiff and defendant;

(E) By granting the plaintiff a credit in the amount of \$1300.00, being one-half the cost of catalytic units paid for by plaintiff, when pro-rating the balance of the funds remaining in the possession of the receiver between the plaintiff and the defendant.

3. The Court erred in awarding the receiver Roy E. Hallberg, a fee for his services as receiver in the amount of \$6,000.00 for the following reasons:

(A) The receiver misrepresented his qualifications and experience to the Court and thereby obtained his appointment;

ed by the receiver in this case, and concealed
e had accepted full-time employment from an
y of the County of Orange, State of Cali-
, at a monthly salary of \$350.00;

The receiver concealed that he would and
delegate his executive duties to others; and,

The receiver failed and neglected to per-
the duties of a receiver and performed duties
negligent and careless manner;

The Trial Judge abused his discretion by re-
, upon petition, to disqualify himself to hear
counting of the receiver and his petition for

The Court erred in awarding the attorney for
ceiver fees in the amount of \$1800.00, in that
fees are excessive and unreasonable.

ed this 29th day of March, 1955.

BRADY, NOSSAMAN & PAULSTON

and

JOSEPH T. ENRIGHT,

By JOSEPH T. ENRIGHT,

Attorneys for Defendants and

Appellants

davit of Service by Mail attached.

ndorsed]: Filed March 30, 1955. Paul P.
en, Clerk.

STATEMENT OF POINTS

1. The trial court correctly assumed jurisdiction to adjudicate plaintiffs' and defendant, Fred I. Richman's rights, respectively, to the balance of funds remaining in the hands of the receiver after the payment of all bills and costs of the receivership, including the receiver's fee and the fee of his attorney.

2. As to the Points raised on appeal by defendant Richman with respect to the division between plaintiff and defendant Richman of said balance remaining in the hands of the receiver, the trial court did not commit error:

(A) In failing to charge plaintiff's interest on the balance of the funds in the amount of \$785.00 which \$785.00 consisted of a petty cash fund which was part of the assets purchased by plaintiff and defendant Richman.

(B) In failing to charge plaintiff's interest on the balance of the funds in the amount of \$1,290.50 for any other amounts, as rents collected by plaintiff's agents.

C. In failing to charge plaintiff's interest on the balance of the funds in the amount of \$2,027.27 including a mortgage payment made by the receiver on or about February 28, 1954. (As a matter of course plaintiff's interest was charged with one-half

In granting plaintiff a credit for one-half of all property taxes which were paid by plaintiff out of her own separate funds, which taxes covered the last two month period during which plaintiff and defendant were joint owners of the property.

In granting plaintiff credit in the amount of \$100.00, being one-half the cost of catalytic units which plaintiff paid out of her own separate funds. That if any mistakes were made in computation by defendant Richman waived the same by failing to object in the trial court.

As to the points raised on appeal by plaintiff Lyda Tidwell with respect to the division between plaintiff and defendant of said balance remaining in the hands of the receiver, the trial court committed error.

In granting defendant Richman a credit of one-half the agent's fee for the month of November, 1934, the last month in which he acted as agent of the Richman Trust, prior to the court terminating the trust and appointing the receiver to operate the properties pending a final determination of the same;

In failing to credit plaintiff's interest in the sum of \$906.50, consisting of seller's escrow fees in the amount of \$329.00 and revenue stamps in the amount of \$577.50, which were defendant's rightful expenses as seller in connection with the sale of all

the order finding the receiver's account to be and correct, and fixing the fees of the receiver and his attorney, but plaintiff does appeal from the order insofar as it charges plaintiff one-half the sum of \$89.20 paid by the receiver for copies of depositions, since said depositions were taken in connection with defendant's objections to the accounting of the receiver. (Plaintiff did not object to the fixing of reasonable fees for the receiver and his attorney, nor has plaintiff appealed from any other portion of the order.

6. The trial court did not abuse its discretion in refusing to disqualify itself in hearing the accounting of the receiver and petition for fees.

Dated this 12th day of April, 1955.

MARTIN, HAHN & CAMUZZI
/s/ By LAURENCE B. MARTIN,
Attorneys for Plaintiff and
Appellant

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 13, 1955. Paul
O'Brien, Clerk.